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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

### **Environmental Protection Commission[567]**

- Replace Analysis
- Replace Chapter 61
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### **Natural Resource Commission[571]**

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### **Revenue Department[701]**

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## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

Former Water, Air and Waste Management[900], renamed by 1986 Iowa Acts, chapter 1245, Environmental Protection Commission under the “umbrella” of the Department of Natural Resources.

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CHAPTER 61  
WATER QUALITY STANDARDS

[Prior to 7/1/83, DEQ Ch 16]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

WATER QUALITY STANDARDS

**567—61.1** Rescinded, effective August 31, 1977.

**567—61.2(455B) General considerations.**

**61.2(1) Policy statement.** It shall be the policy of the commission to protect and enhance the quality of all the waters of the state. In the furtherance of this policy it will attempt to prevent and abate the pollution of all waters to the fullest extent possible consistent with statutory and technological limitations. This policy shall apply to all point and nonpoint sources of pollution.

These water quality standards establish selected criteria for certain present and future designated uses of the surface waters of the state. The standards establish the areas where these uses are to be protected and provide minimum criteria for waterways having nondesignated uses as well. Many surface waters are designated for more than one use. In these cases the more stringent criteria shall govern for each parameter.

Certain of the criteria are in narrative form without numeric limitations. In applying such narrative standards, decisions will be based on the U.S. Environmental Protection Agency's methodology described in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," (1985) and on the rationale contained in "Quality Criteria for Water," published by the U.S. Environmental Protection Agency (1977), as updated by supplemental Section 304 (of the Act) Ambient Water Quality Criteria documents. To provide human health criteria for parameters not having numerical values listed in 61.3(3) Table 1, the required criteria will be based on the rationale contained in these EPA criteria documents. The human health criterion considered will be the value associated with the consumption of fish flesh and a risk factor of  $10^{-5}$  for carcinogenic parameters. For noncarcinogenic parameters, the recommended EPA criterion will be selected. For Class C water, the EPA criteria for fish and water consumption will be selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above.

All methods of sample collection, preservation, and analysis used in applying any of the rules in these standards shall be in accord with those prescribed in 567—Chapter 63.

**61.2(2) Antidegradation policy.** It is the policy of the state of Iowa that:

a. Tier 1 protection. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

b. Tier 2 protection. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the department shall ensure water quality adequate to protect existing uses fully. Further, the department shall ensure the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control before allowing any lowering of water quality.

c. Tier 2½ protection—outstanding Iowa waters. Where high quality waters constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

d. Tier 3 protection—outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.

e. Rescinded IAB 8/31/16, effective 8/12/16.

f. All unapproved facility plans for new or expanded construction permits, except for construction permits issued for nondischarging facilities, shall undergo an antidegradation review if degradation is likely in the receiving water or downstream waters following February 17, 2010.

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, and 52 as well as Corps regional permits 7, 27, 33, and 34 as revised through July 16, 2014, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(5) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) Heavy equipment shall not be used or operated within the stream channel. If in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation. This condition does not further restrict otherwise authorized drainage ditch maintenance activities (Iowa Section 401 Water Quality Certification condition).

Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permits or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require a preconstruction notice under nationwide permit conditions.

**61.2(3) *Minimum treatment required.*** All wastes discharged to the waters of the state must be of such quality that the discharge will not cause the narrative or numeric criteria limitations to be exceeded. Where the receiving waters provide sufficient assimilative capacity that the water quality standards are

not the limiting factor, all point source wastes shall receive treatment in compliance with minimum effluent standards as adopted in rules by the department.

There are numerous parameters of water quality associated with nonpoint source runoff which are of significance to the designated water uses specified in the general and specific designations in 567—61.3(455B), but which are not delineated. It shall be the intent of these standards that the limits on such nonpoint source related parameters when adopted shall be those that can be achieved by best management practices as defined in the course of the continuing planning process from time to time. Existing water quality and nonpoint source runoff control technology will be evaluated in the course of the Iowa continuing planning process, and best management practices and limitations on specific water quality parameters will be reviewed and revised from time to time to ensure that the designated water uses and water quality enhancement goals are met.

**61.2(4) *Regulatory mixing zones.*** Mixing zones are recognized as being necessary for the initial assimilation of point source discharges which have received the required degree of treatment or control. Mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by subrule 61.2(3). The objective of establishing mixing zones is to provide a means of control over the placement and emission of point source discharges so as to minimize environmental impacts. Waters within a mixing zone shall meet the general water quality criteria of subrule 61.3(2). Waters at and beyond mixing zone boundaries shall meet all applicable standards and the chronic and human health criteria of subrule 61.3(3), Tables 1 and 3, for that particular water body or segment. A zone of initial dilution may be established within the mixing zone beyond which the applicable standards and the acute criteria of subrule 61.3(3) will be met. For waters designated under subrule 61.3(5), any parameter not included in Tables 1, 2 and 3 of subrule 61.3(3), the chronic and human health criteria, and the acute criterion calculated following subrule 61.2(1), will be met at the mixing zone and zone of initial dilution boundaries, respectively.

*a.* Due to extreme variations in wastewater and receiving water characteristics, spatial dimensions of mixing zones shall be defined on a site-specific basis. These rules are not intended to define each individual mixing zone, but will set maximum limits which will satisfy most biological, chemical, physical and radiological considerations in defining a particular mixing zone. Additional details are noted in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on November 11, 2009, for considering unusual site-specific features such as side channels and sand bars which may influence a mixing zone. Applications for operation permits under 567—subrule 64.3(1) may be required to provide specific information related to the mixing zone characteristics below their outfall so that mixing zone boundaries can be determined.

*b.* For parameters included in Table 1 only (which does not include ammonia nitrogen), the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on November 11, 2009, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

2. Ten percent of the design low stream flows noted in subrule 61.2(5) for the Mississippi and Missouri Rivers.

3. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. The distance to the juncture of two perennial streams.

2. The distance to a public water supply intake.

3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county and local parks.

4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.

5. The distance to another mixing zone.

6. Not to exceed a distance of 2000 feet.

7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4) "b"(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

c. The stream flow used in determining wasteload allocations to ensure compliance with the maximum contaminant level (MCL), chronic and human health criteria of Table 1 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the following percentages of the design low stream flow as measured at the point of discharge:

(1) Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

(2) Ten percent for the Mississippi and Missouri Rivers.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 1 may not exceed 10 percent of the calculated flow associated with the mixing zone.

d. For toxic parameters noted in Table 1, the following exceptions apply to the mixing zone requirements:

(1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.

(2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi or Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

e. For ammonia criteria noted in Table 3, the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. One hundred percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is less than or equal to 2:1.

2. Fifty percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 2:1, but less than or equal to 5:1.

3. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 5:1.

4. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. The distance to the juncture of two perennial streams.
2. The distance to a public water supply intake.
3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county, and local parks.
4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.
5. The distance to another mixing zone.
6. Not to exceed a distance of 2000 feet.
7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4) "e"(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

*f.* For ammonia criteria noted in Table 3, the stream flow used in determining wasteload allocations to ensure compliance with the chronic criteria of Table 3 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the percentages of the design low stream flow noted in 61.2(4) "e"(1) as measured at the point of discharge.

The pH and temperature values at the boundary of the mixing zone used to select the chronic ammonia criteria of Table 3 will be from one of the following sources. The source of the pH and temperature data will follow the sequence listed below, if applicable data exists from the source.

(1) Specific pH and temperature data provided by the applicant gathered at their mixing zone boundary. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

(2) Regional background pH and temperature data provided by the applicant gathered along the receiving stream and representative of the background conditions at the outfall. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

(3) The statewide average background values presented in Table IV-2 of the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 3 may not exceed 5 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of less than or equal to 2:1, and not exceed 10 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of greater than 2:1. The pH and temperature values at the boundary of the zone of initial dilution used to select the acute ammonia criteria of Table 3 will be from one of the following sources and follow the sequence listed below, if applicable data exists from the source.

1. Specific effluent pH and temperature data if the dilution ratio is less than or equal to 2:1.
2. If the dilution ratio is greater than 2:1, the logarithmic average pH of the effluent and the regional or statewide pH provided in 61.2(4) "f" will be used. In addition, the flow proportioned average temperature of the effluent and the regional or statewide temperature provided in 61.2(4) "f" will be used. The procedures for calculating these data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

*g.* For ammonia criteria noted in Table 3, the following exceptions apply to the mixing zone requirements.

- (1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.
- (2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi and Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

*h.* Temperature changes within mixing zones established for heat dissipation will not exceed the temperature criteria in 61.3(3) "b"(5).

*i.* The appropriateness of establishing a mixing zone where a substance discharged is bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic will be carefully evaluated. In such cases, effects such as potential groundwater contamination, sediment deposition, fish attraction, bioaccumulation in aquatic life, bioconcentration in the food chain, and known or predicted safe exposure levels shall be considered.

**61.2(5) Implementation strategy.** Numerical criteria specified in these water quality standards shall be met when the flow of the receiving stream equals or exceeds the design low flows noted below.

Type of Numerical Criteria	Design Low Flow Regime
Aquatic Life Protection (TOXICS)	
Acute	1Q <sub>10</sub>
Chronic	7Q <sub>10</sub>
Aquatic Life Protection (AMMONIA - N)	
Acute	1Q <sub>10</sub>
Chronic	30Q <sub>10</sub>
Human Health Protection & MCL	
Noncarcinogenic	30Q <sub>5</sub>
Carcinogenic	Harmonic mean

*a.* The allowable 3°C temperature increase criterion for warm water interior streams, 61.3(3) "b"(5) "1," is based in part on the need to protect fish from cold shock due to rapid cessation of heat source and resultant return of the receiving stream temperature to natural background temperature. On low flow streams, in winter, during certain conditions of relatively cold background stream temperature and relatively warm ambient air and groundwater temperature, certain wastewater treatment plants with relatively constant flow and constant temperature discharges will cause temperature increases in the receiving stream greater than allowed in 61.3(3) "b"(5) "1."

*b.* During the period November 1 to March 31, for the purpose of applying the 3°C temperature increase criterion, the minimum protected receiving stream flow rate below such discharges may be increased to not more than three times the rate of flow of the discharge, where there is reasonable assurance that the discharge is of such constant temperature and flow rate and continuous duration as to not constitute a threat of heat cessation and not cause the receiving stream temperature to vary more than 3°C per day.

*c.* Site-specific water quality criteria may be allowed in lieu of the specific numerical criteria listed in Tables 1 and 3 of this chapter if adequate documentation is provided to show that the proposed criteria will protect all existing or potential uses of the surface water. Site-specific water quality criteria may be appropriate where:

- (1) The types of organisms differ significantly from those used in setting the statewide criteria; or
- (2) The chemical characteristics of the surface water such as pH, temperature, and hardness differ significantly from the characteristics used in setting the statewide criteria.

Development of site-specific criteria shall include an evaluation of the chemical and biological characteristics of the water resource and an evaluation of the impact of the discharge. All evaluations for site-specific criteria modification must be coordinated through the department, and be conducted using scientifically accepted procedures approved by the department. Any site-specific criterion developed under the provisions of this subrule is subject to the review and approval of the U.S. Environmental Protection Agency. All criteria approved under the provisions of this subrule will be published periodically by the department. Guidelines for establishing site-specific water quality criteria can be found in "Water Quality Standards Handbook," published by the U.S. Environmental Protection Agency, December 1983.

*d.* A wastewater treatment facility may submit to the department technically valid instream data which provides additional information to be used in the calculations of their wasteload allocations and effluent limitations. This information would be in association with the low flow characteristics, width, length and time of travel associated with the mixing zone or decay rates of various effluent parameters. The wasteload allocation will be calculated considering the applicable data and consistent with the provisions and restrictions in the rules.

*e.* The department may perform use assessment and related use attainability analyses on water bodies where uses may not be known or adequately documented. The preparation of use attainability analysis documents will consider available U.S. Environmental Protection Agency guidance or other applicable guidance. Credible data and documentation will be used to assist in the preparation of use assessments and use attainability analysis reports.

[ARC 8214B, IAB 10/7/09, effective 11/11/09; ARC 8466B, IAB 1/13/10, effective 2/17/10; ARC 9330B, IAB 1/12/11, effective 2/16/11 (See Delay note at the end of chapter); ARC 0121C, IAB 5/16/12, effective 6/20/12; ARC 1495C, IAB 6/11/14, effective 7/16/14; ARC 2695C, IAB 8/31/16, effective 8/12/16]

### **567—61.3(455B) Surface water quality criteria.**

**61.3(1) *Surface water classification.*** All waters of the state are classified for protection of beneficial uses. These classified waters include general use segments and designated use segments.

*a. General use segments.* These are intermittent watercourses and those watercourses which typically flow only for short periods of time following precipitation and whose channels are normally above the water table. These waters do not support a viable aquatic community during low flow and do not maintain pooled conditions during periods of no flow.

The general use segments are to be protected for livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, agricultural, domestic and other incidental water withdrawal uses.

*b. Designated use segments.* These are water bodies which maintain flow throughout the year or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa not specifically listed in the surface water classification of 61.3(5) are designated as Class B(WW-1) waters.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.

Designated uses of segments may change based on a use attainability analysis consistent with 61.2(5) "e." Designated use changes will be specifically listed in the surface water classification of 61.3(5).

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact recreational use (Class "A1"). Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) Secondary contact recreational use (Class "A2"). Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use,

the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing, commercial and recreational boating, any limited contact incidental to shoreline activities and activities in which users do not swim or float in the water body while on a boating activity.

(3) Children's recreational use (Class "A3"). Waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.

(4) Cold water aquatic life—Type 1 (Class "B(CW1)"). Waters in which the temperature and flow are suitable for the maintenance of a variety of cold water species, including reproducing and nonreproducing populations of trout (*Salmonidae* family) and associated aquatic communities.

(5) Cold water aquatic life—Type 2 (Class "B(CW2)"). Waters that include small, channeled streams, headwaters, and spring runs that possess natural cold water attributes of temperature and flow. These waters usually do not support consistent populations of trout (*Salmonidae* family), but may support associated vertebrate and invertebrate organisms.

(6) Warm water—Type 1 (Class "B(WW-1)"). Waters in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.

(7) Warm water—Type 2 (Class "B(WW-2)"). Waters in which flow or other physical characteristics are capable of supporting a resident aquatic community that includes a variety of native nongame fish and invertebrate species. The flow and other physical characteristics limit the maintenance of warm water game fish populations. These waters generally consist of small perennially flowing streams.

(8) Warm water—Type 3 (Class "B(WW-3)"). Waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

(9) Lakes and wetlands (Class "B(LW)"). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(10) Human health (Class "HH"). Waters in which fish are routinely harvested for human consumption or waters both designated as a drinking water supply and in which fish are routinely harvested for human consumption.

(11) Drinking water supply (Class "C"). Waters which are used as a raw water source of potable water supply.

**61.3(2) General water quality criteria.** The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times for the uses described in 61.3(1) "a."

*a.* Such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits.

*b.* Such waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance.

*c.* Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

*d.* Such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life.

*e.* Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

*f.* The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

g. Cations and anions guideline values to protect livestock watering may be found in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on November 11, 2009.

h. The *Escherichia coli* (*E. coli*) content of water which enters a sinkhole or losing stream segment, regardless of the water body’s designated use, shall not exceed a Geometric Mean value of 126 organisms/100 ml or a sample maximum value of 235 organisms/100 ml. No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.

**61.3(3) Specific water quality criteria.**

a. *Class “A” waters.* Waters which are designated as Class “A1,” “A2,” or “A3” in subrule 61.3(5) are to be protected for primary contact, secondary contact, and children’s recreational uses. The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class “A” waters.

(1) The *Escherichia coli* (*E. coli*) content shall not exceed the levels noted in the Bacteria Criteria Table when the Class “A1,” “A2,” or “A3” uses can reasonably be expected to occur.

Bacteria Criteria Table (organisms/100 ml of water)

Use or Category	Geometric Mean	Sample Maximum
Class A1		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15 – 11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
[Class A2 and B(CW)] or OIW or ONRW		
Year-Round	630	2880
Class A3		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A1 - Primary Contact Recreational Use Class A2 - Secondary Contact Recreational Use Class A3 - Children’s Recreational Use		

When a water body is designated for more than one of the recreational uses, the most stringent criteria for the appropriate season shall apply.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

b. *Class “B” waters.* All waters which are designated as Class B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3) or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life. The following criteria shall apply to all Class “B” waters designated in subrule 61.3(5).

(1) Dissolved oxygen. Dissolved oxygen shall not be less than the values shown in Table 2 of this subrule.

(2) pH. The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

(3) General chemical constituents. The specific numerical criteria shown in Tables 1, 2, and 3 of this subrule apply to all waters designated in subrule 61.3(5). The sole determinant of compliance with these criteria will be established by the department on a case-by-case basis. Effluent monitoring or instream monitoring, or both, will be the required approach to determine compliance.

1. The acute criteria represent the level of protection necessary to prevent acute toxicity to aquatic life. Instream concentrations above the acute criteria will be allowed only within the boundaries of the zone of initial dilution.

2. The chronic criteria represent the level of protection necessary to prevent chronic toxicity to aquatic life. Excursions above the chronic criteria will be allowed only inside of mixing zones or only for short-term periods outside of mixing zones; however, these excursions cannot exceed the acute criteria shown in Tables 1 and 3. The chronic criteria will be met as short-term average conditions at all times the flow equals or exceeds either the design flows noted in subrule 61.2(5) or any site-specific low flow established under the provisions of subrule 61.2(5).

3. Rescinded IAB 2/15/06, effective 3/22/06.

(4) Rescinded IAB 2/15/06, effective 3/22/06.

(5) Temperature.

1. No heat shall be added to interior streams or the Big Sioux River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 32°C.

2. No heat shall be added to streams designated as cold water fisheries that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 20°C.

3. No heat shall be added to lakes and reservoirs that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the temperature of the lake or reservoirs above 32°C.

4. No heat shall be added to the Missouri River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added that would raise the stream temperature above 32°C.

5. No heat shall be added to the Mississippi River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In addition, the water temperature at representative locations in the Mississippi River shall not exceed the maximum limits in the table below during more than 1 percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature at such locations exceed the maximum limits in the table below by more than 2°C.

Zone II—Iowa-Minnesota state line to the northern Illinois border (Mile Point 1534.6).

Zone III—Northern Illinois border (Mile Point 1534.6) to Iowa-Missouri state line.

Month	Zone II	Zone III
January	4°C	7°C
February	4°C	7°C
March	12°C	14°C
April	18°C	20°C
May	24°C	26°C
June	29°C	29°C
July	29°C	30°C
August	29°C	30°C
September	28°C	29°C
October	23°C	24°C
November	14°C	18°C
December	9°C	11°C

(6) Early life stage for each use designation. The following seasons will be used in applying the early life stage present chronic criteria noted in Table 3b, “Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present.”

1. For all Class B(CW1) waters, the early life stage will be year-round.

2. For all Class B(CW2) waters, the early life stage will begin on April 1 and last through September 30.

3. For all Class B(WW-1) waters, the early life stage will begin in March and last through September, except as follows:

- For the following, the early life stage will begin in February and last through September:

- The entire length of the Mississippi and Missouri Rivers,

- The lower reach of the Des Moines River south of the Ottumwa dam, and

- The lower reach of the Iowa River below the Cedar River.

- For the following, the early life stage will begin in April and last through September:

- All Class B(WW-1) waters in the Southern Iowa River Basin,

- All of the Class B(WW-1) reach of the Skunk River, the North Skunk River and the South Skunk River south of Indian Creek (Jasper County), and the Class B(WW-1) tributaries to these reaches, and the entire Class B(WW-1) reach of the English River.

4. For all Class B(WW-2) and Class B(WW-3) waters, the early life stage will begin in April and last through September.

5. For all Class B(LW) lake and wetland waters, the early life stage will begin in March and last through September except for the Class B(LW) waters in the southern two tiers of Iowa counties which will have the early life stage of April through September.

*c. Class "C" waters.* Waters which are designated as Class "C" are to be protected as a raw water source of potable water supply. The following criteria shall apply to all Class "C" waters designated in subrule 61.3(5).

- (1) Radioactive substances.

1. The combined radium-226 and radium-228 shall not exceed 5 picocuries per liter at the point of withdrawal.

2. Gross alpha particle activity (including radium-226 but excluding radon and uranium) shall not exceed 15 picocuries per liter at the point of withdrawal.

3. The average annual concentration at the point of withdrawal of beta particle and photon radioactivity from man-made radionuclides other than tritium and strontium-90 shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

4. The average annual concentration of tritium shall not exceed 20,000 picocuries per liter at the point of withdrawal; the average annual concentration of strontium-90 shall not exceed 8 picocuries per liter at the point of withdrawal.

- (2) All substances toxic or detrimental to humans or detrimental to treatment process shall be limited to nontoxic or nondetrimental concentrations in the surface water.

- (3) The pH shall not be less than 6.5 nor greater than 9.0.

*d. Class "HH" waters.* Waters which are designated as Class HH shall contain no substances in concentrations which will make fish or shellfish inedible due to undesirable tastes or cause a hazard to humans after consumption.

- (1) The human health criteria represent the level of protection necessary, in the case of noncarcinogens, to prevent adverse health effects in humans and, in the case of carcinogens, to prevent a level of incremental cancer risk not exceeding 1 in 100,000. Instream concentrations in excess of the human health criteria will be allowed only within the boundaries of the mixing zone.

- (2) Reserved.

#### **TABLE 1. Criteria for Chemical Constituents**

*(all values as micrograms per liter as total recoverable unless noted otherwise)*

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Alachlor	MCL	—	—	—	—	—	—	2	—
Aldrin	Acute	—	—	3	3	3	—	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00050 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	.00049 <sup>(f)</sup>
Aluminum	Chronic	87	—	87	87	87	748	—	—
	Acute	1106	—	750	750	750	983	—	—
Antimony	Human Health — Fish	—	—	—	—	—	—	—	640 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	5.6 <sup>(f)</sup>
Arsenic (III)	Chronic	200	—	150	150	150	200	—	—
	Acute	360	—	340	340	340	360	—	—
	Human Health — Fish	—	—	—	—	—	—	—	50 <sup>(e)(g)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.18 <sup>(f)(g)</sup>
Asbestos	Human Health — F & W	—	—	—	—	—	—	—	7 <sup>(a)(f)</sup>
Atrazine	MCL	—	—	—	—	—	—	3	—
Barium	Human Health + — F & W	—	—	—	—	—	—	—	1000 <sup>(f)</sup>
Benzene	Human Health — F & W	—	—	—	—	—	—	—	22 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	510 <sup>(e)</sup>
Benzo(a)Pyrene	Human Health — F & W	—	—	—	—	—	—	—	.038 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	.18 <sup>(e)</sup>
Beryllium	MCL	—	—	—	—	—	—	4	—
Bromoform	Human Health — F & W	—	—	—	—	—	—	—	43 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	1400 <sup>(e)</sup>
Cadmium	Chronic	1	—	.45 <sup>(h)</sup>	.45 <sup>(h)</sup>	.45 <sup>(h)</sup>	1	—	—
	Acute	4	—	4.32 <sup>(h)</sup>	4.32 <sup>(h)</sup>	4.32 <sup>(h)</sup>	4	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	168 <sup>(e)</sup>
	MCL	—	—	—	—	—	—	5	—
Carbofuran	MCL	—	—	—	—	—	—	40	—
Carbon Tetrachloride	Human Health — F & W	—	—	—	—	—	—	—	2.3 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	16 <sup>(e)</sup>
Chlordane	Chronic	.004	—	.0043	.0043	.0043	.004	—	—
	Acute	2.5	—	2.4	2.4	2.4	2.5	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0081 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.008 <sup>(f)</sup>



Parameter		Use Designations							HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	
para-Dichlorobenzene	Human Health + — F & W	—	—	—	—	—	—	—	63 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	190 <sup>(e)</sup>
3,3-Dichlorobenzidine	Human Health — Fish	—	—	—	—	—	—	—	.28 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.21 <sup>(f)</sup>
Dichlorobromomethane	Human Health — F & W	—	—	—	—	—	—	—	5.5 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	170 <sup>(e)</sup>
1,2-Dichloroethane	Human Health — F & W	—	—	—	—	—	—	—	3.8 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	370 <sup>(e)</sup>
1,1-Dichloroethylene	Human Health — F & W	—	—	—	—	—	—	—	330 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	7.1* <sup>(e)</sup>
cis-1,2-Dichloroethylene	MCL	—	—	—	—	—	—	70	—
1,2-trans-Dichloroethylene	Human Health + — F & W	—	—	—	—	—	—	—	10* <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	140 <sup>(e)</sup>
Dichloromethane	MCL	—	—	—	—	—	—	5	—
1,2-Dichloropropane	Human Health — F & W	—	—	—	—	—	—	—	5.0 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	150 <sup>(e)</sup>
Dieldrin	Chronic	.056	—	.056	.056	.056	.056	—	—
	Acute	.24	—	.24	.24	.24	.24	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00054 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.00052 <sup>(f)</sup>
Dinoseb	MCL	—	—	—	—	—	—	7	—
2,3,7,8-TCDD (Dioxin)	Human Health — F & W	—	—	—	—	—	—	—	5.0-8 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	5.1-8 <sup>(e)</sup>
Diquat	MCL	—	—	—	—	—	—	20	—
2,4-D	Human Health + — F & W	—	—	—	—	—	—	—	100 <sup>(f)</sup>
Endosulfan <sup>(b)</sup>	Chronic	.056	—	.056	.056	.056	.15	—	—
	Acute	.11	—	.22	.22	.22	.3	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	89 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	62 <sup>(f)</sup>
Endothall	MCL	—	—	—	—	—	—	100	—
Endrin	Chronic	.05	—	.036	.036	.036	.036	—	—
	Acute	.12	—	.086	.086	.086	.086	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	.06 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	.059 <sup>(f)</sup>

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)			
Ethylbenzene	Human Health + — F & W	—	—	—	—	—	—	—	530 <sup>(f)</sup>	
	Human Health — Fish	—	—	—	—	—	—	—	2100 <sup>(e)</sup>	
Ethylene dibromide	MCL	—	—	—	—	—	—	.05	—	
Di(2-ethylhexyl)adipate	MCL	—	—	—	—	—	—	400	—	
bis(2-ethylhexyl)phthalate	Human Health — F & W	—	—	—	—	—	—	—	12 <sup>(f)</sup>	
	Human Health — Fish	—	—	—	—	—	—	—	22 <sup>(e)</sup>	
Fluoride	MCL	—	—	—	—	—	—	4000	—	
Glyphosate	MCL	—	—	—	—	—	—	700	—	
Heptachlor	Chronic	.0038	—	.0038	.0038	.0038	.0038	—	—	
	Acute	.38	—	.52	.52	.52	.38	—	—	
	Human Health — Fish	—	—	—	—	—	—	—	.00079 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	—	.00079 <sup>(f)</sup>	
Heptachlor epoxide	Chronic	.0038	—	.0038	.0038	.0038	.0038	—	—	
	Acute	.52	—	.52	.52	.52	.52	—	—	
	Human Health — F & W	—	—	—	—	—	—	—	.00039 <sup>(f)</sup>	
	Human Health — Fish	—	—	—	—	—	—	—	.00039 <sup>(e)</sup>	
Hexachlorobenzene	Human Health — F & W	—	—	—	—	—	—	—	.0028 <sup>(f)</sup>	
	Human Health — Fish	—	—	—	—	—	—	—	.0029 <sup>(e)</sup>	
Hexachlorocyclopentadiene	Human Health — F & W	—	—	—	—	—	—	—	40 <sup>(f)</sup>	
	Human Health — Fish	—	—	—	—	—	—	—	1100 <sup>(e)</sup>	
Lead	Chronic	3	—	7.7 <sup>(i)</sup>	7.7 <sup>(i)</sup>	7.7 <sup>(i)</sup>	3	—	—	
	Acute	80	—	197 <sup>(i)</sup>	197 <sup>(i)</sup>	197 <sup>(i)</sup>	80	—	—	
	MCL	—	—	—	—	—	—	50	—	
gamma-BHC (Lindane)	Chronic	N/A	—	N/A	N/A	N/A	N/A	—	—	
	Acute	.95	—	.95	.95	.95	.95	—	—	
	Human Health + — Fish	—	—	—	—	—	—	—	1.8 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	—	.98 <sup>(f)</sup>	
Mercury (II)	Chronic	3.5	—	.9	.9	.9	.91	—	—	
	Acute	6.5	—	1.64	1.64	1.64	1.7	—	—	
	Human Health + — Fish	—	—	—	—	—	—	—	.15 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	—	.05 <sup>(f)</sup>	
Methoxychlor	Human Health + — F & W	—	—	—	—	—	—	—	100 <sup>(f)</sup>	
Nickel	Chronic	350	—	93 <sup>(k)</sup>	93 <sup>(k)</sup>	93 <sup>(k)</sup>	150	—	—	
	Acute	3250	—	843 <sup>(k)</sup>	843 <sup>(k)</sup>	843 <sup>(k)</sup>	1400	—	—	
	Human Health + — Fish	—	—	—	—	—	—	—	4600 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	—	610 <sup>(f)</sup>	



Parameter		Use Designations							HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	
Tetrachlorethylene	Human Health — F & W	—	—	—	—	—	—	—	6.9 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	33 <sup>(e)</sup>
Thallium	Human Health + — F & W	—	—	—	—	—	—	—	.24 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	.47 <sup>(e)</sup>
Toluene	Chronic	50	—	50	150	150	50	—	—
	Acute	2500	—	2500	7500	7500	2500	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	15* <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	1300 <sup>(f)</sup>
Total Residual Chlorine (TRC)	Chronic	10	—	11	11	11	10	—	—
	Acute	35	—	19	19	19	20	—	—
Toxaphene	Chronic	.037	—	.002	.002	.002	.037	—	—
	Acute	.73	—	.73	.73	.73	.73	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0028 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.0028 <sup>(f)</sup>
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	—	70	—
1,1,1-Trichlorethane	MCL	—	—	—	—	—	—	200	—
	Human Health + — Fish	—	—	—	—	—	—	—	173* <sup>(e)</sup>
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	—	—	6 <sup>(f)</sup>
Trichloroethylene (TCE)	Chronic	80	—	80	80	80	80	—	—
	Acute	4000	—	4000	4000	4000	4000	—	—
	Human Health — Fish	—	—	—	—	—	—	—	300 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	25 <sup>(f)</sup>
Trihalomethanes (total) <sup>(e)</sup>	MCL	—	—	—	—	—	—	80	—
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	—	—	.25 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	24 <sup>(e)</sup>
Xylenes (Total)	MCL	—	—	—	—	—	—	10*	—
Zinc	Chronic	200	—	215 <sup>(f)</sup>	215 <sup>(f)</sup>	215 <sup>(f)</sup>	100	—	—
	Acute	220	—	215 <sup>(f)</sup>	215 <sup>(f)</sup>	215 <sup>(f)</sup>	110	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	26* <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	7.4* <sup>(f)</sup>

- \* units expressed as milligrams/liter
- \*\* to include the sum of known and suspected carcinogenic PAHs (includes benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene)
- † expressed as nanograms/liter
- + represents the noncarcinogenic human health parameters
- ++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health criteria.

- (a) units expressed as million fibers/liter (longer than 10 micrometers)
- (b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured
- (c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.
- (d) Class B numerical criteria for pentachlorophenol are a function of pH using the equation: Criterion ( $\mu\text{g/l}$ ) =  $e^{[1.005(\text{pH}) - x]}$ , where  $e = 2.71828$  and  $x$  varies according to the following table:

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Acute	3.869	—	4.869	4.869	4.869	4.869
Chronic	4.134	—	5.134	5.134	5.134	5.134

- (e) This Class HH criterion would be applicable to any Class B(LW), B(CW1), B(WW-1), B(WW-2), or B(WW-3) water body that is also designated Class HH.
- (f) This Class HH criterion would be applicable to any Class C water body that is also designated Class HH.
- (g) inorganic form only
- (h) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for cadmium are a function of hardness (as  $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$
Chronic	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$

- (i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for copper are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$
Chronic	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$

- (j) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for lead are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$
Chronic	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$

- (k) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for nickel are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$
Chronic	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$

- (l) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for zinc are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$
Chronic	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$

(m) Acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)) and a sulfate concentration of 63 mg/l. Numerical criteria (µg/l) for chloride are a function of hardness (CaCO<sub>3</sub> (mg/l)) and sulfate (mg/l) using the equation for each use according to the following table:

	B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3), B(LW)
Acute	$287.8(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$
Chronic	$177.87(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$

**TABLE 2. Criteria for Dissolved Oxygen**

(all values expressed in milligrams per liter)

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	7.0	5.0	5.0	5.0	5.0*
Minimum value at any time during every 24-hour period	5.0	5.0	5.0	4.0	4.0	5.0*

\*applies only to the upper layer of stratification in lakes

**TABLE 3a. Acute Criterion for Ammonia in Iowa Streams**

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)
6.5	48.8	32.6
6.6	46.8	31.3
6.7	44.6	29.8
6.8	42.0	28.0
6.9	39.1	26.1
7.0	36.1	24.1
7.1	32.8	21.9
7.2	29.5	19.7
7.3	26.2	17.5
7.4	23.0	15.3
7.5	19.9	13.3
7.6	17.0	11.4
7.7	14.4	9.64
7.8	12.1	8.11
7.9	10.1	6.77
8.0	8.40	5.62
8.1	6.95	4.64
8.2	5.72	3.83
8.3	4.71	3.15
8.4	3.88	2.59

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)
8.5	3.20	2.14
8.6	2.65	1.77
8.7	2.20	1.47
8.8	1.84	1.23
8.9	1.56	1.04
9.0	1.32	0.885

**TABLE 3b. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present**

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.8	2.8	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

**TABLE 3c. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Absent**

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.99
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

\*At 15°C and above, the criterion for fish early life stage (ELS) absent is the same as the criterion for fish ELS present.

**TABLE 4. Aquatic Life Criteria for Sulfate for Class B Waters**

(all values expressed in milligrams per liter)

Hardness mg/l as CaCO <sub>3</sub>	Chloride		
	Cl <sup>-</sup> < 5 mg/l	5 ≤ Cl <sup>-</sup> < 25	25 ≤ Cl <sup>-</sup> ≤ 500
H < 100 mg/l	500	500	500
100 ≤ H ≤ 500	500	$[-57.478 + 5.79$ (hardness) + 54.163 (chloride)] × 0.65	$[1276.7 + 5.508$ (hardness) - 1.457 (chloride)] × 0.65
H > 500	500	2,000	2,000

**61.3(4)** Class “C” waters. Rescinded IAB 4/18/90, effective 5/23/90.

**61.3(5)** Surface water classification. The department hereby incorporates by reference “Surface Water Classification,” effective June 17, 2015. This document may be obtained on the department’s Web site at <http://www.iowadnr.gov/InsideDNR/RegulatoryWater/WaterQualityStandards/Rules.aspx>.

**61.3(6)** *Cold water use designation assessment protocol.* The department hereby incorporates by reference “Cold Water Use Designation Assessment Protocol,” effective December 15, 2004. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

**61.3(7)** *Warm water stream use assessment and attainability analysis protocol.* The department hereby incorporates by reference “Warm Water Stream Use Assessment and Attainability Analysis Protocol,” effective March 22, 2006. This document may be obtained on the departments Web site at <http://www.iowadnr.com/water/standards/index.html>.

**61.3(8)** *Recreational use assessment and attainability analysis protocol.* The department hereby incorporates by reference “Recreational Use Assessment and Attainability Analysis Protocol,” effective March 19, 2008. This document may be obtained on the department’s Web site.

This rule is intended to implement Iowa Code chapter 455B, division I, and division III, part 1. [ARC 8039B, IAB 8/12/09, effective 9/16/09; ARC 8214B, IAB 10/7/09, effective 11/11/09; ARC 8226B, IAB 10/7/09, effective 11/11/09; ARC 8466B, IAB 1/13/10, effective 2/17/10; ARC 9223B, IAB 11/17/10, effective 12/22/10; ARC 1988C, IAB 5/13/15, effective 6/17/15]

**567—61.4 to 61.9** Reserved.

#### VOLUNTEER MONITORING DATA REQUIREMENTS

**567—61.10(455B) Purpose.** The department uses water quality monitoring data for a number of purposes, including determining compliance with effluent limits for operation permits issued under 567—Chapter 64. The department also uses water quality monitoring data to determine the relative health of a water body by comparing monitoring data to the appropriate water quality standards established in 567—Chapter 61, a process known as water body assessments. Water body assessments are performed to prepare the biennial water quality report required under Section 305(b) of the Act and the list of impaired waters under Section 303(d) of the Act.

Iowa Code sections 455B.193 to 455B.195 require that credible data, as defined in Iowa Code section 455B.171, be used for the purpose of preparing Section 303(d) lists and other water quality program functions. Data provided by a volunteer are not considered credible data unless provided by a qualified volunteer. The purpose of this chapter is to establish minimum requirements for data produced by volunteers to meet the credible data and qualified volunteer requirements.

**567—61.11(455B) Monitoring plan required.** Volunteer water quality monitoring data submitted to the department must have been produced in accordance with a department-approved volunteer water quality monitoring plan before the data may be used for any of the purposes listed in Iowa Code section 455B.194. Approval of a plan will establish qualified volunteer status for the personnel identified in the plan for those monitoring activities covered under the plan.

**61.11(1) Submittal of the plan.** Prior to initiation of volunteer water quality monitoring activities intended to produce credible data, a water quality monitoring plan must be submitted to the department for review and approval. The plan must be submitted to the Volunteer Monitoring Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, a minimum of 90 days before planned initiation of volunteer monitoring activities. A letter transmitting the plan must specifically request formal review and approval of the plan and identify a contact person. Volunteer monitors are encouraged to communicate with the department and to attend volunteer monitoring training sessions prior to formal submittal of a plan.

**61.11(2) Content of the plan.** A volunteer monitoring plan must contain, at a minimum, the following to be considered an acceptable volunteer monitoring plan:

- a. A statement of the intent of the monitoring effort.
- b. The name(s) of the person or persons that will be involved in data collection or analysis, the specific responsibilities of each person or group of people, and the general qualifications of the volunteers to carry out those responsibilities. For groups, such as educational institutions, it will be acceptable to

identify the persons involved by general description (e.g., tenth grade biology class) with the exception of persons in responsible charge.

*c.* The name(s) of the person or persons that will oversee the monitoring plan, ensure that quality assurance and control objectives are being met, and certify the data. The person or persons in responsible charge must have training commensurate with the level of expertise to ensure that credible data is being generated.

*d.* The duration of the volunteer monitoring effort. In general, the department will not approve plans of greater than three years' duration unless a longer duration is justified.

*e.* Location and frequency of sample collection.

*f.* Methods of data collection and analysis.

*g.* Record keeping and data reporting procedures.

**61.11(3)** *Department review of the plan.* The department will review monitoring plans and normally approve or disapprove the plan within 90 days of receipt. The department will work with the contact person identified in the plan to make any necessary changes prior to taking formal action. The department will use guidelines contained in the publications EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5, 2001) and Volunteer Monitor's Guide to Quality Assurance Project Plans (1966, EPA 841-B-96-003) or equivalent updates to determine if the plans provide adequate quality assurance and quality control measures. Approval or disapproval of the plan will be in the form of a letter and approval may include conditions or limitations.

**61.11(4)** *Changes in monitoring plans.* The department must approve any changes to an approved monitoring plan. Data collected under a modified plan will not be considered credible data until such time as the department has approved the modifications. Modifications to an approved plan should be submitted at the earliest possible time to avoid interruptions in data collection and to ensure continuity of data.

**61.11(5)** *Appeal of disapproval.* If a monitoring plan submitted for approval is disapproved, the decision may be appealed by filing an appeal with the director within 30 days of disapproval. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

**567—61.12(455B)** **Use of volunteer monitoring data.** Data produced under an approved water quality monitoring plan will be considered credible data for the purposes listed in Iowa Code section 455B.194 if the following conditions are met.

**61.12(1)** *Data submittal.* A qualified volunteer monitor or qualified volunteer monitoring group must specifically request that data produced under an approved volunteer monitoring plan be considered credible data. A letter identifying the specific data must be submitted along with a certification from the volunteer or the person in responsible charge for volunteer groups that the data, to the best of the volunteer's or responsible person's knowledge, was produced in accordance with the approved volunteer monitoring plan. The department shall provide a standard format on the IOWATER Web site for submittal of qualified volunteer data and related information. The department encourages volunteers to enter monitoring data on the IOWATER volunteer monitoring database maintained by the department, but doing so does not constitute submittal to or acceptance of the data by the department for uses requiring credible data. Volunteer data shall be labeled as such in any departmental reports, Web sites, or databases.

**61.12(2)** *Department review of submitted data.* The department must review and approve the submitted data. The person submitting the data will be informed of the department's decision either to accept or reject the data. The department will attempt to resolve any apparent inconsistencies or questionable values in the submitted data prior to making a final decision.

**567—61.13(455B)** **Department audits of volunteer monitoring activities.** The department shall conduct field audits of a statistically valid and representative sample of volunteer data collection and analysis procedures to ensure compliance with an approved plan and may conduct confirmatory monitoring tests. Volunteers shall be informed of any audit results and be provided with an opportunity to address any concerns to the extent possible. The department reserves the right to rescind approval of

an approved plan if it finds substantial problems that cannot be addressed in a timely manner to ensure the quality of the data being produced.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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8/12/16]

<sup>0</sup> Two or more ARCs

<sup>1</sup> February 16, 2011, effective date of 61.2(2)“g”(8) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 11, 2011.



CHAPTER 64  
WASTEWATER CONSTRUCTION AND OPERATION PERMITS

[Prior to 7/1/83, DEQ Ch 19]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—64.1(455B) Definitions.** Rescinded IAB 3/11/09, effective 4/15/09.

**567—64.2(455B) Permit to construct.**

**64.2(1)** No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under 567—Chapter 9, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to 64.2(10) be allowed by any person subject to the conditions of the permit.

**64.2(2)** The site for each new wastewater treatment plant or expansion or upgrading of existing facilities must be inspected and approved by the department prior to submission of plans and specifications. Applications must be submitted in accordance with 567—60.4(455B).

**64.2(3)** Site approval under 64.2(2) shall be based on the criteria contained in the Ten States Standards, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent that separation distances of this subrule conflict with the separation distances of Iowa Code section 455B.134(3) “f,” the greater distance shall prevail. The following separation distances from a treatment works shall apply unless a separation distance exception is provided in the “Iowa Wastewater Facilities Design Standards.” The separation distance from lagoons shall be measured from the water surface.

*a.* 1000 feet from the nearest inhabitable residence, commercial building, or other inhabitable structure. If the inhabitable or commercial building is the property of the owner of the proposed treatment facility, or there is written agreement with the owner of the building, the separation criteria shall not apply. Any such written agreement shall be filed with the county recorder and recorded for abstract of title purposes, and a copy submitted to the department.

*b.* 1000 feet from public shallow wells.

*c.* 400 feet from public deep wells.

*d.* 400 feet from private wells.

*e.* 400 feet from lakes and public impoundments.

*f.* 25 feet from property lines and rights-of-way.

When the above separation distances cannot be maintained for the expansion, upgrading or replacement of existing facilities, the separation distances shall be maintained at no less than 90 percent of the existing separation distance on the site, providing no data is available indicating that a problem has existed or will be created.

**64.2(4)** Applications for a construction permit must be submitted to the director in accordance with 567—60.4(455B) at least 120 days in advance of the date of start of construction.

**64.2(5)** The director shall act upon the application within 60 days of receipt of a complete application by either issuing a construction permit or denying the construction permit in writing unless a longer review period is required and the applicant is so notified in writing. Notwithstanding the 120-day requirement in 64.2(4), construction of the approved system may commence immediately after the issuance of a construction permit.

**64.2(6)** The construction permit shall expire if construction thereunder is not commenced within one year of the date of issuance thereof. The director may grant an extension of time to commence construction if it is necessary or justified, upon showing of such necessity or justification to the director.

**64.2(7)** The director may modify or revoke a construction permit for cause which shall include but not be limited to the following:

*a.* Failure to construct said wastewater disposal system or part thereof in accordance with the approved plans and specifications.

*b.* Violation of any term or condition of the permit.

*c.* Obtaining a permit by misrepresentation of facts or failure to disclose fully all material facts.

*d.* Any change during construction that requires material changes in the approved plans and specifications.

**64.2(8)** A construction permit shall not be required for the following:

- a.* Storm sewers or storm water disposal systems that transport only storm water.
- b.* Any new disposal system or extension or addition to any existing disposal system that receives only domestic or sanitary sewage from a building, housing or occupied by 15 persons or less.
- c.* A privately owned pretreatment facility, except an anaerobic lagoon, where a treatment unit or units provide partial reduction of the strength or toxicity of the waste stream prior to additional treatment and disposal by another person, corporation, or municipality. However, the department may require that the design basis and construction drawings be filed for information purposes.

**64.2(9)** Review of applications.

*a.* Review of applications for construction permits shall be based on the criteria contained in the “Iowa Wastewater Facilities Design Standards,” the Ten States Standards, the “Iowa Antidegradation Implementation Procedure” effective August 12, 2016, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent of any conflict between the above criteria, the “Iowa Wastewater Facilities Design Standards” standards shall prevail.

*b.* The chapters of the “Iowa Wastewater Facilities Design Standards”\* that apply to wastewater facilities projects, and the date of adoption of those chapters are:

	<u>Chapter</u>	<u>Date of Adoption</u>
11.	Project submittals	April 25, 1979
12.	Iowa Standards for Sewer Systems	September 6, 1978 (Amended March 28, 1979 and May 20, 1987)
13.	Wastewater pumping stations and force mains	March 19, 1985
14.	Wastewater treatment works	March 22, 1984 (Amended May 20, 1987)
15.	Screening and grit removal	February 18, 1986
16.	Settling	March 22, 1984 (Amended May 20, 1987)
17.	Sludge handling & disposal	March 26, 1980
18.	Biological treatment	
	<i>A.</i> Fixed film media treatment	October 21, 1985
	<i>B.</i> Activated sludge	March 22, 1984
	<i>C.</i> Wastewater treatment ponds (Lagoons)	April 25, 1979 (Amended May 20, 1986 and May 20, 1987)
19.	Supplemental treatment processes	November 13, 1986
20.	Disinfection	February 18, 1986
21.	Land application of wastewater	April 25, 1979

\*The design manual as adopted and amended is available upon request to department, also filed with administrative rules coordinator.

*c.* Variances from the design standards and siting criteria which provide in the judgment of the department for substantially equivalent or improved effectiveness may be requested when there are unique circumstances not found in most projects. The director may issue variances when circumstances are appropriate. The denial of a variance may be appealed to the commission.

*d.* When reviewing the variance request the director may consider the unique circumstances of the project, direct or indirect environmental impacts, the durability and reliability of the alternative, and the purpose and intent of the rule or standard in question.

*e.* Circumstances that would warrant consideration of a variance (which provides for substantially equivalent or improved effectiveness) may include the following:

(1) The utilization of new equipment or new process technology that is not explicitly covered by the current design standards.

(2) The application of established and acceptable technologies in an innovative manner not covered by current standards.

(3) It is reasonably clear that the conditions and circumstances which were considered in the adoption of the rule or standard are not applicable for the project in question and therefore the effective purpose of the rule will not be compromised if a variance is granted.

**64.2(10)** Applications for sanitary sewer extension construction permits shall conform to the Iowa Standards for Sewer Systems, and approval shall be subject to the following:

*a.* A sanitary sewer extension construction permit may be denied if, at the time of application, the treatment facility treating wastewater from the proposed sewer is not in substantial compliance with its operating permit or if the treatment facility receives wastes in volumes or quantities that exceed its design capacity and interfere with its operation or performance.

If the applicant is operating under a compliance schedule which is being adhered to that leads to resolution of the substantial compliance issues or if the applicant can demonstrate that the problem has been identified, the planning completed, and corrective measures initiated, then the construction permit may be granted.

*b.* A sanitary sewer extension construction permit may be denied if bypassing has occurred at the treatment facility, except when any of the following conditions are being met:

(1) The bypassing is due to a combined sewer system, and the facility is in compliance with a long-term CSO control plan approved by the department.

(2) The bypassing occurs as a result of a storm with an intensity or duration greater than that of a storm with a return period of five years. (See App. A)

(3) The department determines that timely actions are being taken to eliminate the bypassing.

*c.* A sanitary sewer extension construction permit may be denied if an existing downstream sewer is or will be overloaded or surcharged, resulting in bypassing, flooded basements, or overflowing manholes, unless:

(1) The bypassing or flooding is the result of a precipitation event with an intensity or duration greater than that of a storm with a return period of two years. (See App. A); or

(2) The system is under full-scale facility planning (I/I and SSES) and the applicant provides a schedule that is approved by the department for rehabilitating the system to the extent necessary to handle the additional loadings.

*d.* Potential loads. Construction permits may be granted for sanitary sewer extensions that are sized to serve future loads that would exceed the capacity of the existing treatment works. However, initial connections shall be limited to the load that can be handled by the existing treatment works. The department will determine this load and advise the applicant of the limit. This limitation will be in effect until additional treatment capacity has been constructed.

**64.2(11)** Certification of completion. Within 30 days after completion of construction, installation or modification of any wastewater disposal system or part thereof or extension or addition thereto, the permit holder shall submit a certification by a registered professional engineer that the project was completed in accordance with the approved plans and specifications.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 2695C, IAB 8/31/16, effective 8/12/16]

#### **567—64.3(455B) Permit to operate.**

**64.3(1)** Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. An operation permit is not required for the following:

*a.* A private sewage disposal system which does not discharge into, or have the potential to reach, a designated water of the state or subsurface drainage tile (NOTE: private sewage disposal systems under this exemption are regulated under 567—Chapter 69).

*b.* A semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into a water of the state.

*c.* A pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal.

*d.* A discharge from a geothermal heat pump which does not reach a navigable water.

*e.* Water well construction and well services related discharge that does not reach a water of the United States as defined in 40 CFR Part 122.2.

*f.* Discharges from the application of biological pesticides and chemical pesticides where the discharge does not reach a water of the United States as defined in 40 CFR Part 122.2.

*g.* Agricultural storm water discharges. This exclusion applies only to the operation permit requirement set forth in this rule and does not alter other requirements of law, including but not limited to any applicable requirements of Iowa Code chapters 459 and 459A.

**64.3(2)** Rescinded, effective 2/20/85.

**64.3(3)** The owner of any disposal system or part thereof in existence before August 21, 1973, for which a permit has been previously granted by the Iowa department of health or the Iowa department of environmental quality shall submit such information as the director may require to determine the conformity of such system and its operation with the rules of the department by no later than 60 days after the receipt of a request for such information from the director. If the director determines that the disposal system does not conform to the rules of the department, the director may require the owner to make such modifications as are necessary to achieve compliance. A construction permit shall be required, pursuant to 64.2(1), prior to any such modification of the disposal system.

**64.3(4)** Applications.

*a. Individual permit.* Except as provided in 64.3(4)“*b*,” applications for operation permits required under 64.3(1) shall be made on forms provided by the department, as noted in 567—subrule 60.3(2). The application for an operation permit under 64.3(1) shall be filed pursuant to 567—subrule 60.4(2). Permit applications for a new discharge of storm water associated with construction activity as defined in 567—Chapter 60 under “storm water discharge associated with industrial activity” must be submitted at least 60 days before the date on which construction is to commence. Upon completion of a tentative determination with regard to the permit application as described in 64.5(1)“*a*,” the director shall issue operation permits for applications filed pursuant to 64.3(1) within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is required and the applicant is so notified.

*b. General permit.* A Notice of Intent for coverage under a general permit must be made on the appropriate form provided by the department listed in 567—subrule 60.3(2) and in accordance with 567—64.6(455B). A Notice of Intent must be submitted to the department according to the following:

(1) For existing storm water discharge associated with industrial activity, with the exception of discharges identified in subparagraphs (2) and (3) of this paragraph, on or before October 1, 1992.

(2) For any existing storm water discharge associated with industrial activity from a facility or construction site that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, on or before March 10, 2003.

For purposes of this subparagraph, municipality means city, town, borough, county, parish, district, association, or other public body created by or under state law. The entire population served by the public body shall be used in the determination of the population.

(3) For any existing storm water discharge associated with small construction activity on or before March 10, 2003.

(4) For storm water discharge associated with industrial activity which initiates operation after October 1, 1992, with the exception of discharges identified in subparagraphs (2) and (3) of this paragraph, where storm water discharge associated with industrial activity could occur as defined in rule 567—60.2(455B).

(5) For any private sewage disposal system installed after July 1, 1998, where subsoil discharge is not possible.

(6) For any discharge, except a storm water only discharge, from a mining or processing facility after July 18, 2001.

**64.3(5)** Requirements for industries that discharge to another disposal system except storm water point sources.

*a.* The director may require any person discharging wastes to a publicly or privately owned disposal system to submit information similar to that required in an application for an operation permit, but no operation permit is required for such discharge.

Significant industrial users as defined in 567—Chapter 60 must submit a treatment agreement which meets the following criteria:

(1) The agreement must be on the treatment agreement form, number 542-3221, as provided by the department; and

(2) Must identify and limit the monthly average and the daily maximum quantity of compatible and incompatible pollutants discharged to the disposal system and the variations in daily flow; and

(3) Be signed and dated by the significant industrial user and the owner of the disposal system accepting the wastewater; and

(4) Provide that the quantities to be discharged to the disposal system must be in accordance with the applicable standards and requirements in 567—Chapter 62.

*b.* A significant industrial user must submit a new treatment agreement form 60 days in advance of a proposed expansion, production increase or process modification that may result in discharges of sewage, industrial waste, or other waste in excess of the discharge stated in the existing treatment agreement. An industry that would become a significant industrial user as a result of a proposed expansion, production increase or process modification shall submit a treatment agreement form 60 days in advance of the proposed expansion, production increase or process modification.

*c.* A treatment agreement form must be submitted at least 180 days before a new significant industrial user proposes to discharge into a wastewater disposal system. The owner of a wastewater disposal system shall notify the director by submitting a complete treatment agreement to be received at least 10 days prior to making any commitment to accept waste from a proposed new significant industrial user. However, the department may notify the owner that verification of the data in the treatment agreement may take longer than 10 days and advise that the owner should not enter into a commitment until the data is verified.

*d.* A treatment agreement form for each significant industrial user must be submitted with the facility plan or preliminary engineering report for the construction or modification of a wastewater disposal system. These agreements will be used in determining the design basis of the new or upgraded system.

*e.* Treatment agreement forms from significant industrial users shall be required as a part of the application for a permit to operate the wastewater disposal system receiving the wastes from the significant industrial user.

**64.3(6)** Rescinded, effective 7/23/86.

**64.3(7)** Operation permits may be granted for any period of time not to exceed five years. Applications for renewal of an operation permit must be submitted to the department 180 days in advance of the date the permit expires. General permits will be issued for a period not to exceed five years. Each permit to be renewed shall be subject to the provisions of all rules of the department in effect at the time of the renewal.

**64.3(8)** Identity of signatories of permit applications. The person who signs the application for a permit shall be:

*a. Corporations.* In the case of corporations, a responsible corporate officer. A responsible corporate officer means:

(1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or

(2) The manager of manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

*b. Partnerships.* In the case of a partnership, a general partner.

*c. Sole proprietorships.* In the case of a sole proprietorship, the proprietor.

*d. Municipal, state, federal, or other public agency.* In the case of a municipal, state, or other public facility, either the principal executive officer or the ranking elected official. A principal executive officer of a public agency includes:

(1) The chief executive officer of the agency; or

(2) A senior executive officer having responsibility for the overall operations of a unit of the agency.

*e. Storm water discharge associated with industrial activity from construction activities.* In the case of a storm water discharge associated with construction activity, either the owner of the site or the general contractor.

*f. Certification.* Any person signing a document under paragraph “a” to “d” of this subrule shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations.

The person who signs NPDES reports shall be a person described in this subrule, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by a duly authorized representative of the person described in this subrule. A person is a duly authorized representative if the authorization is made in writing by a person described in this subrule and the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility, such as plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the corporation.

**64.3(9)** When necessary to comply with present standards which must be met at a future date, an operation permit shall include a schedule for the alteration of the permitted facility to meet said standards in accordance with 64.7(4) and 64.7(5). Such schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to 567—64.2(455B). When necessary to comply with a pretreatment standard or requirement which must be met at a future date, a significant industrial user will be given a compliance schedule for meeting those requirements.

**64.3(10)** Operation permits shall contain such conditions as are deemed necessary by the director to ensure compliance with all applicable rules of the department, including monitoring and reporting conditions, to protect the public health and beneficial uses of state waters, and to prevent water pollution from waste storage or disposal operations.

**64.3(11)** The director may amend, revoke and reissue, or terminate in whole or in part any individual operation permit or coverage under a general permit for cause. Except for general permits, the director may modify in whole or in part any individual operation permit for cause. A variance or modification to the terms and conditions of a general permit shall not be granted. If a variance or modification to a general permit is desired, the applicant must apply for an individual permit following the procedures in 64.3(4) “a.”

*a.* Permits may be amended, revoked and reissued, or terminated for cause either at the request of any interested person (including the permittee) or upon the director’s initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

*b.* Cause under this subrule includes the following:

(1) Violation of any term or condition of the permit.

(2) Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(4) Failure to submit such records and information as the director shall require both generally and as a condition of the permit in order to ensure compliance with the discharge conditions specified in the permit.

(5) Failure or refusal of an NPDES permittee to carry out the requirements of 64.7(7)“c.”

(6) Failure to provide all the required application materials or appropriate fees.

(7) A request for a modification of a schedule of compliance, an interim effluent limitation, or the minimum monitoring requirements pursuant to 567—paragraph 60.4(2)“b.”

(8) Causes listed in 40 CFR 122.62 and 122.64.

*c.* The permittee shall furnish to the director, within a reasonable time, any information that the director may request to determine whether cause exists for amending, revoking and reissuing, or terminating a permit, including a new permit application.

*d.* The filing of a request by an interested person for an amendment, revocation and reissuance, or termination does not stay any permit condition.

*e.* If the director decides the request is not justified, the director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, hearings, or appeals.

*f.* Draft permits.

(1) If the director tentatively decides to amend, revoke and reissue, or terminate a permit, a draft permit shall be prepared according to 64.5(1).

(2) When a permit is amended under this paragraph, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit.

(3) When a permit is revoked and reissued under this paragraph, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) If the permit amendment falls under the definition of “minor amendment” in 567—60.2(455B), the permit may be amended without a draft permit or public notice.

(5) During any amendment, revocation and reissuance, or termination proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

**64.3(12)** No permit may be issued:

*a.* When the applicant is required to obtain certification under Section 401 of the Clean Water Act and that certification has not been obtained or waived;

*b.* When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

*c.* To a new source or new discharger if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge to a water segment which does not meet applicable water quality standards must demonstrate, before the close of the public comment period for a draft NPDES permit, that:

(1) There is sufficient remaining load in the water segment to allow for the discharge; and

(2) The existing dischargers to the segment are subject to compliance schedules designed to bring the segment into compliance with water quality standards.

The director may waive the demonstration if the director already has adequate information to demonstrate (1) and (2).

[**ARC 7625B**, IAB 3/11/09, effective 4/15/09; **ARC 8520B**, IAB 2/10/10, effective 3/17/10; **ARC 9365B**, IAB 2/9/11, effective 3/30/11; **ARC 0529C**, IAB 12/12/12, effective 1/16/13; **ARC 2482C**, IAB 4/13/16, effective 5/18/16; **ARC 2572C**, IAB 6/8/16, effective 5/18/16]

#### **567—64.4(455B) Issuance of NPDES permits.**

**64.4(1)** *Individual permit.* An individual NPDES permit is required when there is a discharge of a pollutant from any point source into navigable waters. An NPDES permit is not required for the following:

*a.* Reserved.

b. Discharges of dredged or fill material into navigable waters which are regulated under Section 404 of the Act;

c. The introduction of sewage, industrial wastes or other pollutants into a POTW by indirect dischargers. (This exclusion from requiring an NPDES permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, indirect discharges shall comply with pretreatment standards promulgated by the administrator pursuant to Section 307(b) of the Act and adopted by reference by the commission);

d. Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances);

e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to the following:

- (1) Discharges from concentrated animal feeding operations as defined in 40 CFR 122.23;
- (2) Discharges from concentrated aquatic animal production facilities as defined in 40 CFR 122.24;
- (3) Discharges to aquaculture projects as defined in 40 CFR 122.25;
- (4) Discharges from silvicultural point sources as defined in 40 CFR 122.27;

f. Return flows from irrigated agriculture; and

g. Water transfers, which are defined as activities that convey or connect navigable waters without subjecting the transferred water to intervening industrial, municipal, or commercial use.

**64.4(2) General permit.**

a. The director may issue general permits which are consistent with 64.4(2)“b” and the requirements specified in 567—64.6(455B), 567—64.7(455B), subrule 64.8(2), and 567—64.9(455B) for the following activities:

(1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26.

(2) Private sewage disposal system discharges permitted under 567—Chapter 69 where subsoil discharge is not possible as determined by the administrative authority.

(3) Discharges from water well construction and related well services where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.

(4) For any discharge, except a storm water only discharge, from a mining or processing facility.

(5) Discharges from the application of biological pesticides and chemical pesticides which leave a residue where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.

b. Each general permit issued by the department must:

(1) Be adopted as an administrative rule in accordance with Iowa Code chapter 17A, the Administrative Procedure Act. Each proposed permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development,

(2) Correspond to existing geographic or political boundaries, and

(3) Be identified in 567—64.15(455B).

c. If an NPDES permit is required for an activity covered by a general permit, the applicant may seek either general permit coverage or an individual permit. Procedures and requirements for obtaining an individual NPDES permit are detailed in 64.3(4)“a.” Procedures for filing a Notice of Intent for coverage under a general permit are described in 567—64.6(455B) “Completing a Notice of Intent for Coverage Under a General Permit.”

**64.4(3) Effect of a permit.**

a. Except for any toxic effluent standards and prohibitions imposed under Section 307 of the Act and standards for sewage sludge use or disposal under Section 405(d) of the Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403 and 405(a)-(b) of the Act, and equivalent limitations and standards set out in 567—Chapters 61 and 62. However, a permit may be terminated during its term for cause as set forth

in 64.3(11). Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

*b.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

[**ARC 7625B**, IAB 3/11/09, effective 4/15/09; **ARC 8520B**, IAB 2/10/10, effective 3/17/10; **ARC 9365B**, IAB 2/9/11, effective 3/30/11; **ARC 2482C**, IAB 4/13/16, effective 5/18/16]

**567—64.5(455B) Notice and public participation in the individual NPDES permit process.**

**64.5(1)** *Formulation of tentative determination.* The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a permit application in advance of the public notice as described in 64.5(2).

*a.* If the tentative determination is to issue an NPDES permit, the department shall prepare a permit rationale for each draft permit pursuant to 64.5(3) and a draft permit. The draft permit shall include the following:

(1) Effluent limitations identified pursuant to 64.7(2) and 64.7(3), for those pollutants proposed to be limited.

(2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to 64.7(4) and 64.7(5), for meeting the effluent limitations and other permit requirements.

(3) Any other special conditions (other than those required in 64.7(7)) which will have a significant impact upon the discharge described in the permit application.

*b.* If the tentative determination is to deny an NPDES permit, the department shall prepare a notice of intent to deny the permit application. The notice of intent to deny an application will be placed on public notice as described in 64.5(2).

*c.* If the tentative determination is to issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit the final permit to the applicant. The applicant will have 30 days to appeal the final operation permit.

*d.* If the tentative determination is to deny an operation permit (non-NPDES permit), no public notice is required. The department shall send written notice of the denial to the applicant. The applicant will have 30 days to appeal the denial.

**64.5(2)** *Public notice for NPDES permits.*

*a.* Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the procedures of subparagraphs (1) to (4).

(1) The public notice for a draft NPDES permit or major permit amendment shall be circulated by the applicant within the geographical areas of the proposed discharge by posting the public notice in public places of the city nearest the premises of the applicant in which the effluent source is located and by posting the public notice near the entrance to the applicant's premises and in nearby places.

(2) The public notice for the denial of a permit application shall be sent to the applicant and circulated by the department within the geographical areas of the proposed discharge by publishing the public notice in local newspapers and periodicals or, if appropriate, in a newspaper of general circulation.

(3) The public notice shall be sent by the department to any person upon request.

(4) Upon request, the department shall add the name of any person or group to the distribution list to receive copies of all public notices concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area and shall send a copy of all public notices to such persons.

*b.* In addition to the requirements in paragraph 64.5(2) "a," prior to the issuance of a major NPDES permit or a major permit amendment to a major NPDES permit, the public notice shall be published by

the applicant in local newspapers and periodicals or, if appropriate, in a newspaper of general circulation. Publication of a public notice is not required prior to the issuance of the following:

- (1) A minor NPDES permit,
- (2) A minor permit amendment, or
- (3) A major permit amendment to a minor NPDES permit.

Major and minor NPDES permits and major and minor permit amendments are defined in 567—60.2(455B).

*c.* The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the permit application and request a public hearing pursuant to 64.5(6). Written comments may be submitted by paper or electronic means. All comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the director's final determinations with respect to the permit application. The period for comment may be extended at the discretion of the department. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 64.5(8).

*d.* The contents of the public notice of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall include at least the following:

- (1) The name, address, and telephone number of the department.
- (2) The name and address of each applicant.
- (3) A brief description of each applicant's activities or operations which result in the discharge described in the permit application (e.g., municipal waste treatment plant, corn wet milling plant, or meat packing plant).
- (4) The name of the waterway to which each discharge of the applicant is made and a short description of the location of each discharge of the applicant on the waterway indicating whether such discharge is a new or an existing discharge.
- (5) A statement of the department's tentative determination to issue or deny an NPDES permit for the discharge or discharges described in the permit application.
- (6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph "b" of this subrule, procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.
- (7) The address, telephone number, and E-mail address of places at which interested persons may obtain further information, request a copy of the tentative determination and any associated documents prepared pursuant to 64.5(1), request a copy of the permit rationale described in 64.5(3), and inspect and copy permit forms and related documents.

*e.* No public notice is required for a minor permit amendment, including an amendment to correct typographical errors, include more frequent monitoring requirements, revise interim compliance schedule dates, change the owner name or address, include a local pretreatment program, or remove a point source outfall that does not result in the discharge of pollutants from other outfalls.

*f.* No public notice is required when a request for a permit amendment or a request for a termination of a permit is denied. The department shall send written notice of the denial to the requester and the permittee only. No public notice is required if an applicant withdraws a permit application.

**64.5(3) *Permit rationales and notices of intent to deny.***

*a.* When the department has made a determination to issue an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a permit rationale with respect to the application described in the public notice. The contents of such permit rationales shall include at least the following information:

- (1) A detailed description of the location of the discharge described in the permit application.
- (2) A quantitative description of the discharge described in the permit application which includes:

1. The average daily discharge in pounds per day of any pollutants which are subject to limitations or prohibitions under 64.7(2) or Section 301, 302, 306 or 307 of the Act and regulations published thereunder; and

2. For thermal discharges subject to limitation under the Act, the average and maximum summer and winter discharge temperatures in degrees Fahrenheit.

(3) The tentative determinations required under 64.5(1).

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards applicable to the receiving waters and effluent standards and limitations applicable to the proposed discharge.

(5) An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.

(6) Any calculations or other necessary explanation of the derivation of effluent limitations.

b. When the department has made a determination to deny an application for an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a notice of intent to deny with respect to the application described in the public notice. The contents of such notice of intent to deny shall include at least the following information:

(1) A detailed description of the location of the discharge described in the permit application; and

(2) A description of the reasons supporting the tentative decision to deny the permit application.

c. When the department has made a determination to issue an operation permit as described in 64.5(1), the department shall prepare a short description of the waste disposal system and the reasons supporting the decision to issue an operation permit. The description shall be sent to the operation permit applicant upon request.

d. When the department has made a determination to deny an application for an operation permit as described in 64.5(1), the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

e. Upon request, the department shall add the name of any person or group to a distribution list to receive copies of permit rationales and notices of intent to deny and shall send a copy of all permit rationales and notices of intent to deny to such persons or groups.

**64.5(4) Notice to other government agencies.** Prior to the issuance of an NPDES permit, the department shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Notifications may be distributed and written views or recommendations may be submitted by paper or electronic means. Procedures for such notification shall include the procedures of paragraphs "a" to "f."

a. At the time of issuance of public notice pursuant to 64.5(2), the department shall transmit the public notice to any other state whose waters may be affected by the issuance of the NPDES permit. Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendation thus received, the director shall provide to the affected state or states and to the regional administrator a written explanation of the reasons for failing to accept any written recommendation.

b. At the time of issuance of public notice pursuant to 64.5(2), the department shall send the public notice for proposed discharges (other than minor discharges) into navigable waters to the appropriate district engineer of the army corps of engineers.

(1) The department and the district engineer for each corps of engineers district within the state may arrange for: notice to the district engineer of minor discharges; waiver by the district engineer of the right to receive public notices with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof; and any procedures for the transmission of forms, period of comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

(2) A copy of any written agreement between the department and a district engineer shall be forwarded to the regional administrator and shall be available to the public for inspection and copying in accordance with 567—Chapter 2.

c. Upon request, the department shall send the public notice to any other federal, state, or local agency, or any affected county, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to 64.5(6).

d. The department shall send the public notice for any proposed NPDES permit within the geographical area of a designated and approved management agency under Section 208 of the Act (33 U.S.C.1288).

e. The department shall send the public notice to the local board of health for the purpose of assisting the applicant in coordinating the applicable requirements of the Act and Iowa Code chapter 455B with any applicable requirements of the local board of health.

f. Upon request, the department shall provide any of the entities listed in 64.5(4) “a” through “e” with a copy of the permit rationale, permit application, or proposed permit prepared pursuant to 64.5(1).

**64.5(5) Public access to NPDES information.** The records of the department connected with NPDES permits are available for public inspection and copying to the extent provided in 567—Chapter 2.

**64.5(6) Public hearings on proposed NPDES permits.** The applicant, any affected state, the regional administrator, or any interested agency, person or group of persons may request or petition for a public hearing with respect to an NPDES application. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the director within the 30-day period prescribed in 64.5(2) “b” and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The director shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding the hearing. Any hearing held pursuant to this subrule shall be held in the geographical area of the proposed discharge, or other appropriate area in the discretion of the director, and may, as appropriate, consider related groups of permit applications.

**64.5(7) Public notice of public hearings on proposed NPDES permits.**

a. Public notice of any hearing held pursuant to 64.5(6) shall be circulated at least as widely as was the notice of the tentative determinations with respect to the permit application.

(1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(2) Notice shall be sent to all persons and government agencies which received a copy of the notice for the permit application;

(3) Notice shall be mailed to any person or group upon request; and

(4) Notice pursuant to subparagraphs (1) and (2) of this paragraph shall be made at least 30 days in advance of the hearing.

b. The contents of public notice of any hearing held pursuant to 64.5(6) shall include at least the following:

(1) The name, address, and telephone number of the department;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) The name of the water body to which each discharge is made and a short description of the location of each discharge to the water body;

(4) A brief reference to the public notice issued for each NPDES application, including the date of issuance;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the person or persons requesting the hearing;

(8) The address and telephone number of the premises where interested persons may obtain further information, request a copy of the draft NPDES permit prepared pursuant to 64.5(1), request a copy of the permit rationale prepared pursuant to 64.5(3), and inspect and copy permit forms and related documents;

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) The final date for submission of comments (paper or electronic) regarding the tentative determinations with respect to the permit application.

**64.5(8) Response to comments.** At the time a final NPDES permit is issued, the director shall issue a response to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant, and the document shall be made available to the public upon request. The responsiveness summary shall:

*a.* Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and

*b.* Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the public notice or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 0529C, IAB 12/12/12, effective 1/16/13; ARC 2482C, IAB 4/13/16, effective 5/18/16]

**567—64.6(455B) Completing a Notice of Intent for coverage under a general permit.**

**64.6(1) Contents of a complete Notice of Intent.** An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in paragraphs “a” to “c” of this subrule except that a Notice of Intent is not required for discharges authorized under General Permit No. 6.

*a. Notice of Intent Application Form.* The following Notice of Intent forms must be completed in full.

(1) General Permit No. 1 “Storm Water Discharge Associated with Industrial Activity,” Form 542-1415.

(2) General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities,” Form 542-1415.

(3) General Permit No. 3 “Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Construction Sand and Gravel Facilities,” Form 542-1415.

(4) General Permit No. 4 “Discharge from On-Site Wastewater Treatment and Disposal Systems,” Form 542-1541.

(5) General Permit No. 5 “Discharge from Mining and Processing Facilities,” Form 542-4006.

(6) General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”

*b. General permit fee.* The general permit fee according to the schedule in 567—64.16(455B) payable to the Department of Natural Resources.

*c. Public notification.* The following public notification requirements must be completed for the corresponding general permit.

(1) General Permits No. 1, No. 2 and No. 3. A demonstration that a public notice was published in at least one newspaper with the largest circulation in the area in which the facility is located or the activity will occur. The newspaper notice shall, at the minimum, contain the following information:

PUBLIC NOTICE OF STORM WATER DISCHARGE

The (applicant name) plans to submit a Notice of Intent to the Iowa Department of Natural Resources to be covered under NPDES General Permit (select the appropriate general permit—No. 1 “Storm Water Discharge Associated with Industrial Activity” or General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities”). The storm water discharge will be from (description of industrial activity) located in (¼ section, township, range, county). Storm water will be discharged from (number) point source(s) and will be discharged to the following streams: (stream name(s)).

Comments may be submitted to the Storm Water Discharge Coordinator, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034. The public may review the Notice of Intent from 8 a.m. to 4:30 p.m., Monday through Friday, at the above address after it has been received by the department.

(2) General Permits No. 4, No. 5, No. 6, and No. 7. There are no public notification requirements for these permits.

**64.6(2)** *Authorization to discharge under a general permit.* Upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4) “b,” the applicant is authorized to discharge after evaluation of the Notice of Intent by the department is complete and the determination has been made that the contents of the Notice of Intent satisfy the requirements of 567—Chapter 64. The discharge authorization date for all storm water discharges associated with industrial activity that are in existence on or before October 1, 1992, shall be October 1, 1992. The applicant will receive notification by the department of coverage under the general permit. If any of the items required for filing a Notice of Intent specified in 64.6(1) are missing, the department will consider the application incomplete and will notify the applicant of the incomplete items.

**64.6(3)** *General permit suspension or revocation.* In addition to the causes for suspension or revocation which are listed in 64.3(11), the director may suspend or revoke coverage under a general permit issued to a facility or a class of facilities for the following reasons and require the applicant to apply for an individual NPDES permit in accordance with 64.3(4) “a”:

a. The discharge would not comply with Iowa’s water quality standards pursuant to 567—Chapter 61, or

b. The department finds that the activities associated with a Notice of Intent filed with the department do not meet the conditions of the general permit. The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application, or

c. The department finds that water well construction and well service discharge are not managed in a manner consistent with the conditions specified in General Permit No. 6, or

d. The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7.

**64.6(4)** *Eligibility for individual permit holders.* A person holding an individual NPDES permit for an activity covered by a general permit may apply for coverage under a general permit upon expiration of the individual permit and by filing a Notice of Intent according to procedures described in 64.3(4) “b.”

**64.6(5)** *Filing a Notice of Discontinuation.* A notice to discontinue the activity covered by the NPDES general permit shall be made in writing to the department 30 days prior to or after discontinuance of the discharge. For storm water discharge associated with industrial activity for construction activities, the discharge will be considered as discontinued when “final stabilization” has been reached. Final stabilization means that all soil-disturbing activities at the site have been completed and that a uniform perennial vegetative cover with a density of 70 percent for the area has been established or equivalent stabilization measures have been employed.

The notice of discontinuation shall contain the following:

a. The name of the facility to which the permit was issued,

b. The general permit number and permit authorization number,

c. The date the permitted activity was, or will be, discontinued, and

d. A signed certification in accordance with the requirements in the general permit.

**64.6(6)** *Transfer of ownership—construction activity part of a larger common plan of development.* For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in the event a permittee transfers ownership of all or any part of property subject to NPDES General Permit No. 2, both the permittee and transferee shall be responsible for compliance with the provisions of the general permit for that portion of the project which has been transferred, including when the transferred property is less than one acre in area, provided that:

a. The transferee is notified in writing of the existence and location of the general permit and pollution prevention plan, and of the transferee's duty to comply, and proof of such notice is included with the notice to the department of the transfer.

b. If the transferee agrees, in writing, to become the sole responsible permittee for the property which has been transferred, then the transferee shall be solely responsible for compliance with the provisions of the general permit for the transferred property.

c. If the transferee agrees, in writing, to obtain coverage under NPDES General Permit No. 2 for the property which has been transferred, then the transferee is required to obtain coverage under NPDES General Permit No. 2 for the transferred property. After the transferee has agreed, in writing, to obtain coverage under NPDES General Permit No. 2 for the transferred property, the authorization issued under NPDES General Permit No. 2 to the transferor for the transferred property shall be considered by the department as not providing NPDES permit coverage for the transferred property and the transferor's authorization issued under NPDES General Permit No. 2 for, and only for, the transferred property shall be deemed by the department as being discontinued without further action of the transferor.

d. All notices as described in this subrule shall contain the name of the development as submitted to the department in the original Notice of Intent and as modified by any subsequent written notices of name changes submitted to the department, the authorization number assigned to the authorization by the department, the legal description of the transferred property including lot number, if any, and any other information necessary to precisely locate the transferred property and to establish the legality of the document.

[ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 1337C, IAB 2/19/14, effective 3/26/14; ARC 2482C, IAB 4/13/16, effective 5/18/16]

#### **567—64.7(455B) Terms and conditions of NPDES permits.**

**64.7(1) Prohibited discharges.** No NPDES permit may authorize any of the discharges prohibited by 567—62.1(455B).

**64.7(2) Application of effluent, pretreatment and water quality standards and other requirements.** Each NPDES permit shall include any of the following that is applicable:

a. An effluent limitation guideline promulgated by the administrator under Sections 301 and 304 of the Act and adopted by reference by the commission in 567—62.4(455B).

b. A standard of performance for a new source promulgated by the administrator under Section 306 of the Act and adopted by reference by the commission in 567—62.4(455B).

c. An effluent standard, effluent prohibition or pretreatment standard promulgated by the administrator under Section 307 of the Act and adopted by reference by the commission in 567—62.4(455B) or 567—62.5(455B).

d. A water quality related effluent limitation established by the administrator pursuant to Section 302 of the Act.

e. Prior to promulgation by the administrator of applicable effluent and pretreatment standards under Sections 301, 302, 306, and 307 of the Act, such conditions as the director determines are necessary to carry out the provisions of the Act.

f. Any other limitation, including those:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the antidegradation policy in 567—subrule 61.2(2); or

(2) Necessary to meet any other federal law or regulation; or

(3) Required to implement any applicable water quality standards; or

(4) Any legally applicable requirement necessary to implement total maximum daily loads established pursuant to Section 303(d) of the Act and incorporated in the continuing planning process approved under Section 303(e) of the Act and any regulations and guidelines issued pursuant thereto.

(5) Any limitation necessary to comply with the antidegradation policy requirements of 567—subrule 61.2(2) implemented according to procedures hereby incorporated by reference and known as the "Iowa Antidegradation Implementation Procedure," effective

August 12, 2016. This document may be obtained on the department's Web site at: <http://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Standards>.

g. Limitations must control all pollutants or pollutant parameters which the director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria, in 567—Chapter 61. When the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion of the water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

h. Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to Section 208(b) of the Act.

In any case where an NPDES permit applies to effluent standards and limitations described in paragraph "a," "b," "c," "d," "e," "f," "g," or "h," the director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some verification of that statement. In any case where an NPDES permit applies any more stringent effluent limitation, described in 64.7(2) "f"(1) or "g," based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

**64.7(3) Effluent limitations in issued NPDES permits.** In the application of effluent standards, and limitations, water quality standards, and other legally applicable requirements, pursuant to 64.7(2), the director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director may, in addition to the specification of daily quantitative limitations by weight, specify other limitations such as average or maximum concentration limits, for the level of pollutants authorized in the discharge.

[COMMENT. The manner in which effluent limitations are expressed will depend upon the nature of the discharge. Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges). Batch discharges should be more particularly described and limited in terms of (i) frequency (e.g., to occur not more than once every three weeks), (ii) total weight (e.g., not to exceed 300 pounds per batch discharge), (iii) maximum rate of discharge of pollutants during the batch discharge (e.g., not to exceed 2 pounds per minute), and (iv) prohibition or limitation by weight, concentration, or other appropriate measure of specified pollutants (e.g., shall not contain at any time more than 0.1 ppm zinc or more than ¼ pound of zinc in any batch discharge). Other intermittent discharges, such as recirculation blowdown, should be particularly limited to comply with any applicable water quality standards and effluent standards and limitations.]

**64.7(4) Schedules of compliance in issued NPDES permits.** The director shall follow the following procedure in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

a. With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in 64.7(2) "f" and 64.7(2) "g," the permittee shall be required to take specific steps to achieve compliance with: applicable effluent standards and limitations; if more stringent, water quality standards; or if more stringent, legally applicable requirements listed in 64.7(2) "f" and 64.7(2) "g." In the absence of any legally applicable schedule of compliance, such steps shall be achieved in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

b. In any case where the period of time for compliance specified in paragraph 64.7(4) "a" exceeds one year, a schedule of compliance shall be specified in the permit which shall set forth interim requirements and the dates for their achievement; in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than one year and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

[COMMENT. Certain interim requirements such as the submission of preliminary or final plans often require less than one year, and thus a shorter interval should be specified. Other requirements such as the construction of treatment facilities may require several years for completion and may not readily subdivide into one-year intervals. Long-term interim requirements should nonetheless be subdivided into intervals not longer than one year at which the permittee is required to report progress to the director pursuant to 64.7(4)“c.”]

c. Either before or up to 14 days following each interim date and the final date of compliance the permittee shall provide the department with written notice of the permittee’s compliance or noncompliance with the interim or final requirement.

d. On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph “c” of this subrule). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name and address of each noncomplying permittee.

(2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility; failure to notify of compliance with interim requirement to complete construction by June 30).

(3) A short description of any actions or proposed actions by the permittee to comply or by the director to enforce compliance with the interim or final requirement.

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections).

e. If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the director may, pursuant to 567—Chapters 7 and 60, modify, suspend or revoke the permit or take direct enforcement action.

**64.7(5) Schedules of compliance in issued NPDES permits for disadvantaged communities.** If compliance with federal regulations, applicable requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department will result in substantial and widespread economic and social impact (SWESI) to the ratepayers and the affected community, the director may establish in an NPDES permit a schedule of compliance that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI. Schedules of compliance established under this subrule are intended to result in compliance with the applicable federal and state regulations and requirements by the regulated entity and the affected community.

a. *Disadvantaged community status.* The director shall find that a regulated entity and the affected community are a disadvantaged community by evaluating all of the following:

(1) The ability of the regulated entity and the affected community to pay for a project based on the ratio of the total annual project costs per household to median household income (MHI),

(2) MHI in the community and the unemployment rate of the county in which the community is located, and

(3) The outstanding debt of the system and the bond rating of the community.

b. *Disadvantaged community analysis (DCA).* A regulated entity or affected community must submit a disadvantaged community analysis (DCA) to the director to be considered for disadvantaged status. A DCA may only be submitted when new requirements in a proposed or reissued NPDES permit may result in SWESI.

(1) A DCA may be submitted by any of the following:

1. A wastewater disposal system owned by a municipal corporation or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or a designated and approved management agency under Section 208 of the Act (a POTW);

2. A wastewater disposal system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated

and approved management agency under Section 208 of the Act (33 U.S.C. 1288) (a semipublic system); or

3. Any other owner of a wastewater disposal system that is not a private sewage disposal system and does not discharge industrial wastes. “Private sewage disposal system” and “industrial waste” are defined in rule 567—60.2(455B).

(2) A DCA may be submitted prior to the issuance of an initial NPDES permit if the facility does not discharge industrial wastes and is not a new source or new discharger. “New source” is defined in rule 567—60.2(455B). “New discharger” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants; that did not commence the discharge of pollutants at a particular site prior to August 13, 1979; that is not a new source; and that has never received a finally effective NDPEs permit for discharges at that site.

(3) A DCA may be submitted by the entities noted in subparagraph 64.7(5)“b”(1) above for consideration of a disadvantaged community loan interest rate under the clean water state revolving fund.

*c. Contents of a DCA.*

(1) A DCA must contain all of the following:

1. Proposed total annual project costs as defined in paragraph 64.7(5)“d”;
2. The number of households in the affected community or, if the entity is not serving households, the number of ratepayers;
3. A description of the bond rating of the affected community over the last year, if available;
4. The user rates, as follows:
  - If the DCA is submitted by or for a municipality or other community, the current sewer rate ordinances, including the sewer rates of any industrial users;
  - If the DCA is submitted by or for a water treatment facility, the water rate schedules or tables;

or

- If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the monthly ratepayer charge for wastewater treatment;

5. An explanation of why the regulated entity or affected community believes that compliance with the proposed requirements will result in SWESI.

(2) If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the DCA must also contain either:

1. For entities with more than ten households or ratepayers, the median household or ratepayer income, as determined by an income survey conducted by the regulated entity based on the Iowa community development block grant income survey guidelines (the survey must be included in the DCA); or
2. For entities with ten or fewer households or ratepayers, an estimate of median household or ratepayer income.

*d. Definition of total annual project costs.* “Total annual project costs” means the current costs of wastewater treatment in the community (if any) plus the future costs of proposed wastewater system improvements that will meet or exceed all applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or requirements of an order of the department. Total annual project costs shall include any current and proposed facility operation and maintenance costs and any existing (outstanding) and proposed system debt, as expressed in current and proposed sewer rates. The costs of the proposed wastewater treatment shall assume a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the total annual project costs.

The formula for the calculation of total annual project costs for a regulated entity and affected community is: total annual project costs = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Current annual system budget (if any), including operation and maintenance (O&M) and existing debt service + Future annual O&M costs.

*e. Disadvantaged community matrix (DCM).* The department hereby incorporates by reference “Disadvantaged Community Matrix,” DNR Form 542-1246, effective January 16, 2013. This document may be obtained on the department’s NPDES Web site.

Upon receipt of a complete DCA, the director shall use the disadvantaged community matrix (DCM) to evaluate the disadvantaged status of the community. Compliance with the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the regulated entity and affected community shall be considered a disadvantaged community, if the point total derived from the DCM is equal to or greater than 12. The following data sources shall be used to derive the point total in the DCM:

- (1) The total annual project costs as stated in the DCA;
- (2) The number of households or ratepayers in a community as stated in the DCA;
- (3) The bond rating of the community, if available, as stated in the DCA;
- (4) The MHI of either:

1. The community, as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community and is based on the Iowa community development block grant income survey guidelines; or

2. The ratepayer group, as stated in an income survey that is conducted by the regulated entity and is based on the Iowa community development block grant income survey guidelines; and

- (5) The unemployment rate of the county where the community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household or per ratepayer to MHI shall be calculated in the DCM as follows: The total annual project costs shall be divided by the number of households or ratepayers to obtain the costs per household or per ratepayer, and the costs per household or per ratepayer shall be divided by the MHI to obtain the ratio.

*f. Ratio.* The director shall not consider a regulated entity or affected community a disadvantaged community if the ratio of compliance costs to MHI is less than 1 percent. The director shall consider a regulated entity or affected community a disadvantaged community if the ratio of compliance costs to MHI is greater than or equal to 2 percent. If the ratio of compliance costs to MHI is greater than or equal to 1 percent and less than 2 percent, the director shall use the DCM to determine if the community is disadvantaged. The ratio of compliance costs to MHI shall be the ratio of the total annual project costs per household to MHI as calculated in the DCM.

*g. Compliance schedule for a disadvantaged community.* A schedule of compliance established in an NPDES permit for a disadvantaged community as a result of SWESI may contain one or two parts as necessary to comply with the applicable federal regulations and requirements in 567—Chapters 60, 61, 62, 63, and 64.

- (1) The first part of a schedule of compliance for a disadvantaged community shall encompass one five-year NPDES permit cycle and shall require the permit holder to submit an alternatives report, an alternatives implementation compliance plan (AICP), and annual reports of progress that contain brief updates regarding the completion of the alternatives report and the AICP.

1. Alternatives report. The alternatives report must detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department without creating SWESI. The alternatives report must describe which measures will be evaluated for feasibility and affordability during the next portion of the compliance schedule. Alternative pollution control measures may include, but are not limited to, facility upgrades, construction of a new facility, relocation of the discharge point(s), regionalization, or outfall consolidation. Other appropriate measures may include, but are not limited to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report must also include a plan for pursuing funding options, including grants and low-interest loans. The alternatives report shall be submitted no later than two years after permit issuance.

2. Alternatives implementation compliance plan (AICP). The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternative(s) that will be implemented, a schedule of the time necessary to implement the alternative(s), and an updated DCA. The AICP shall be submitted no later than 4½ years after permit issuance.

(2) If the entity or community continues to qualify as disadvantaged according to the DCM evaluation based on the DCA submitted with the AICP, the entity or community may receive a second schedule of compliance as specified in this subrule. The second schedule of compliance for a disadvantaged community may contain either the implementation schedule from the AICP or a schedule for submittal of a future compliance plan (FCP).

1. AICP implementation schedule. If the AICP proposes a schedule for implementation of one or more feasible alternatives, the proposed schedule shall be included in the reissued NPDES permit for the disadvantaged community.

2. Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the disadvantaged community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the updated information in the DCA submitted with the AICP. The FCP shall detail how the disadvantaged community will meet the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department and the period necessary to do so. An FCP shall review the types of technology capable of treating the pollutant of concern, as well as the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored. The FCP shall be submitted no later than three years after permit issuance. A schedule of compliance requiring the submittal of an FCP shall also require the submittal of annual reports of progress that contain updated financial information, an updated DCA, and a brief update regarding the completion or implementation of the FCP. If the DCM evaluation determines that an entity or community is no longer disadvantaged based on the most recent DCA, the NPDES permit may be amended to change the schedule of compliance.

3. Schedule extension. The second part of a schedule of compliance for a disadvantaged community may be extended at the discretion of the director.

(3) Schedules of compliance issued in accordance with this subrule shall comply with paragraphs 64.7(4) “b” through “e.”

**64.7(6) Disadvantaged unsewered communities.** If compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department will result in substantial and widespread economic and social impact (SWESI) to the ratepayers of an unsewered community, the director may negotiate a compliance agreement that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI.

*a. Disadvantaged unsewered community status.* The director shall find that an unsewered community is a disadvantaged unsewered community by evaluating all of the following:

(1) The ability of the unsewered community to pay for a project based on the ratio of the total annual project costs per household to MHI,

(2) The unemployment rate in the county where the unsewered community is located, and

(3) The MHI of the unsewered community.

*b. Disadvantaged unsewered community analysis (DUCA).* To be considered for disadvantaged unsewered community status, an unsewered community may submit a disadvantaged unsewered community analysis (DUCA) to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department. Only unsewered communities may submit a DUCA under this subrule. For the purposes of this subrule, an unsewered community is defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment. An entity defined in rule 567—60.2(455B) as a private sewage disposal system may not submit a DUCA or qualify for a disadvantaged unsewered community compliance agreement under paragraph 64.7(6) “g.”

A DUCA may also be submitted for consideration of a disadvantaged community loan interest rate under the clean water state revolving fund.

*c. Contents of a DUCA.* A DUCA must contain:

- (1) Proposed total annual project costs as defined in paragraph 64.7(6) “d”;
- (2) The number of households in the unsewered community and source of household information;
- (3) Total amount of any awarded grant funding;
- (4) An explanation of why the unsewered community believes that compliance with the proposed requirements will result in SWESI.

If no MHI information is available for the unsewered community, the community should conduct a rate survey to determine the MHI. The survey must be conducted in accordance with the Iowa community development block grant income survey guidelines. In addition, the survey must be attached to the DCA.

*d. Definition of total annual project costs.* “Total annual project costs” means the future costs of proposed wastewater system installation or improvements that will meet or exceed all applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or requirements of an order of the department. Total annual project costs shall include the proposed facility operation and maintenance (O&M) costs and the proposed debt of the system as expressed in the proposed sewer rates. The costs of the proposed wastewater treatment shall assume a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the total annual project costs.

The formula for the calculation of total annual project costs for an unsewered community is: total annual project costs = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Future annual O&M costs.

*e. Disadvantaged unsewered community matrix (DUCM).* The department hereby incorporates by reference “Disadvantaged Unsewered Community Matrix,” DNR Form 542-1247, effective January 16, 2013. This document may be obtained on the department’s NPDES Web site.

Upon receipt of a complete DUCA, the director shall use the disadvantaged unsewered community matrix (DUCM) to evaluate the disadvantaged status of the unsewered community. Compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the unsewered community shall be considered a disadvantaged unsewered community, if the point total derived from the DUCM is equal to or greater than 10. The following data sources shall be used to derive the point total in the DUCM:

- (1) The total annual project costs as stated in the DUCA;
- (2) The number of households in the unsewered community as stated in the DUCA;
- (3) The MHI of the unsewered community as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community and is based on the Iowa community development block grant income survey guidelines; and
- (4) The unemployment rate of the county where the unsewered community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household to MHI shall be calculated in the DUCM as follows: the total annual project costs shall be divided by the number of households in the unsewered community to obtain the costs per household, and the costs per household shall be divided by MHI to obtain the ratio.

*f. Ratio and other considerations.* The director shall not consider an unsewered community a disadvantaged unsewered community if the ratio of compliance costs to MHI is below 1 percent. The director shall consider an unsewered community a disadvantaged unsewered community if the ratio of compliance costs to MHI is greater than or equal to 2 percent. If the ratio of compliance costs to MHI is greater than or equal to 1 percent, and less than 2 percent, the director shall use the DUCM to determine if the unsewered community is disadvantaged. The ratio of compliance costs to MHI shall be the ratio of the total annual project costs per household to MHI as calculated in the DUCM. The director shall not require installation of a wastewater treatment system by an unsewered community if the director determines that such installation would create SWESI.

*g. Compliance agreement for a disadvantaged unsewered community.* A compliance agreement negotiated with a disadvantaged unsewered community as a result of SWESI shall require the unsewered community to submit an alternatives report and an alternatives implementation compliance plan (AICP).

(1) Alternatives report. The alternatives report must detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with the water quality standards without creating SWESI. The alternatives report must describe which measures will be evaluated for feasibility and affordability after the report submittal. Alternative pollution control measures may include, but are not limited to, upgrades of existing infrastructure, construction of a new facility, relocation of the discharge point(s), regionalization, or outfall consolidation. Other appropriate measures may include, but are not limited to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report shall also include a plan for pursuing funding options, including grants and low-interest loans. The alternatives report shall be submitted no later than two years after an unsewered community has been determined to be a disadvantaged unsewered community.

(2) Alternatives implementation compliance plan (AICP). The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternative(s) that will be implemented, a schedule of the time necessary to implement the alternative(s), and an updated DUCA. The AICP shall be submitted no later than 4½ years after an unsewered community has been determined to be a disadvantaged unsewered community.

(3) AICP implementation schedule. If the AICP proposes a schedule for implementation of one or more feasible alternatives, the proposed schedule shall be included in an administrative order between the department and the unsewered community. If the feasible alternative that will be implemented requires a construction permit, an operation permit, or an NPDES permit, the unsewered community shall comply with the rules regarding those permits in this chapter.

(4) Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the unsewered community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the updated information in the DUCA submitted with the AICP. The FCP shall detail how the unsewered community will meet the water quality standards and the period necessary to do so. An FCP shall review the types of technology capable of treating the pollutant of concern, as well as the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored. The FCP shall be submitted no later than seven years after an unsewered community has been determined to be a disadvantaged unsewered community. An administrative order requiring the submittal of an FCP shall also require the submittal of biennial progress reports that contain an updated DUCA. If the DUCM evaluation determines that an unsewered community is no longer disadvantaged based on the most recent DUCA, the order may be amended at the discretion of the director.

**64.7(7)** *Other terms and conditions of issued NPDES permits.* Each issued NPDES permit shall provide for and ensure the following:

*a.* That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit; that if the terms and conditions of a general permit are no longer applicable to a discharge, the applicant shall apply for an individual NPDES permit;

*b.* That the permit may be amended, revoked and reissued, or terminated in whole or in part for the causes provided in 64.3(11) "b."

*c.* That the permittee shall permit the director or the director's authorized representative upon the presentation of credentials:

- (1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;
- (2) To have access to and copy any records required to be kept under terms and conditions of the permit;
- (3) To inspect any monitoring equipment or method required in the permit; or
- (4) To sample any discharge of pollutants.

*d.* That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the director of the following:

(1) One hundred eighty days in advance of any new introduction of pollutants into such treatment works from a new source as defined in 567—Chapter 60 if such source were discharging pollutants;

(2) Except as specified below, 180 days in advance of any new introduction of pollutants into such treatment works from a source which would be subject to Section 301 of the Act if such source were discharging pollutants. However, the connection of such a source need not be reported if the source contributes less than 25,000 gallons of process wastewater per day at the average discharge, or contributes less than 5 percent of the organic or hydraulic loading of the treatment facility, or is not subject to a federal pretreatment standard adopted by reference in 567—Chapter 62, or does not contribute pollutants that may cause interference or pass through; and

(3) Sixty days in advance of any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

*e.* That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of Sections 204(b), 307, and 308 of the Act. As a means of ensuring such compliance, the permittee shall require that each industrial user subject to the requirements of Section 307 of the Act give to the permittee periodic notice (over intervals not to exceed six months) of progress toward full compliance with Section 307 requirements. The permittee shall forward a copy of the notice to the director.

*f.* That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of treatment and control which have been installed or are used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance also include adequate laboratory control and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which have been installed by the permittee only when such operation is necessary to achieve compliance with the conditions of the permit.

*g.* That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

*h.* If an applicant for an NPDES permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of an NPDES permit, the director shall specify additional terms and conditions of the issued NPDES permit which shall prohibit the proposed disposal or control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare. (See rule 567—62.9(455B) which prohibits the disposal of pollutants, other than heat, into wells within Iowa.)

*i.* That the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

*j.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the terms of this permit.

**64.7(8) POTW compliance—plan of action required.** The owner of a publicly owned treatment works (POTW) must prepare and implement a plan of action to achieve and maintain compliance with final effluent limitations in its NPDES permit, as specified below:

*a.* The director shall notify the owner of a POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action to the appropriate regional field office of the department within six months of such notice, unless a longer time is needed and is authorized in writing by the director.

*b.* The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action. A plan may include the submittal of a disadvantaged community analysis in accordance with subrule 64.7(5), at the discretion of the POTW.

The plan may provide for a phased construction approach to meet interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter term projects may provide incremental benefits to water quality in the interim.

Information on the purpose and preparation of the plan can be found in the departmental document entitled “Guidance on Preparing a Plan of Action,” available from the department’s regional field offices.

*c.* Upon submission of a complete plan of action to the department, the plan should be reviewed and approved or disapproved within 60 days unless a longer time is required and the POTW owner is so notified.

*d.* The NPDES permit for the facility shall be amended to include the implementation schedule or other actions developed through the plan to achieve and maintain compliance.

This rule is intended to implement Iowa Code chapter 455B, division III, part 1 (455B.171 to 455B.187).

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 0529C, IAB 12/12/12, effective 1/16/13; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 2695C, IAB 8/31/16, effective 8/12/16]

### **567—64.8(455B) Reissuance of operation and NPDES permits.**

**64.8(1) Individual operation and NPDES permits.** Individual operation and NPDES permits will be reissued according to the procedures identified in 64.8(1) “a” to “c.”

*a.* Any operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit pursuant to 567—60.4(455B). For a POTW, permission to submit an application at a later date may be granted by the director. In addition, the applicant must submit up-to-date information on the permittee’s production levels, the permittee’s waste treatment practices, or the nature, contents, and frequency of the permittee’s discharge, as required by the permit application.

*b.* The director shall follow the notice and public participation procedures specified in 567—64.5(455B) in connection with each request for reissuance of an NPDES permit.

*c.* Notwithstanding any other provision in these rules, any new point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (October 18, 1972) and which is so constructed as to meet all applicable standards of performance for new sources shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code, as amended through December 31, 1976, whichever period ends first.

**64.8(2) Renewal of coverage under a general permit.** Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs “a” to “d.”

*a.* If a permittee intends to continue an activity covered by a general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent in accordance with 64.6(1).

*b.* A complete Notice of Intent for coverage under a reissued or renewed general permit must be submitted to the department within 180 days after the expiration date of a general permit.

*c.* A person holding a general permit is subject to the terms of the permit until it expires or a Notice of Discontinuation is submitted in accordance with 64.6(5). If the person holding a general permit continues the activity beyond the expiration date, the conditions of the expired general permit will remain in effect provided the permittee submits a complete Notice of Intent for coverage under a renewed or reissued general permit within 180 days after the expiration date of the expired general permit. If the person continues an activity for which the general permit has expired and the general permit has not been reissued or renewed, the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4) "a."

*d.* The Notice of Intent requirements shall not include a public notification when a general permit has been reissued or renewed provided the permittee has already submitted a complete Notice of Intent including the public notification requirements of 64.6(1). Another public notice is required when any information, including facility location, in the original public notice is changed.

**64.8(3) Continuation of expiring operation and NPDES permits.**

*a.* The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely and complete application under 567—subrule 60.4(2); and

(2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

*b.* Operation and NPDES permits continued under this subrule remain fully effective and enforceable.

*c.* If a permittee is not in compliance with the conditions of the expiring or continued permit, the department may choose to do any of the following:

(1) Initiate enforcement action on a permit which has been continued or reissued;

(2) Issue a notice of intent to deny a permit under 64.5(1);

(3) Reissue a permit with appropriate conditions in accordance with this subrule; or

(4) Take other actions authorized by this rule.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 2482C, IAB 4/13/16, effective 5/18/16]

**567—64.9(455B) Monitoring, record keeping and reporting by operation permit holders.** Operation permit holders are subject to any applicable requirements and provisions specified in the operation permit issued by the department and to the applicable requirements and provisions specified in 567—Chapter 63.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 2482C, IAB 4/13/16, effective 5/18/16]

**567—64.10(455B) Silvicultural activities.** The following is adopted by reference: 40 CFR 122.27.

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

**567—64.11 and 64.12** Reserved.

**567—64.13(455B) Storm water discharges.**

**64.13(1)** The following is adopted by reference: 40 CFR 122.26.

**64.13(2)** Small municipal separate storm sewer systems.

*a.* For any discharge from a regulated small municipal separate storm sewer system (MS4), the permit application must be submitted no later than March 10, 2003, if designated under this subrule.

*b.* All MS4s located in urbanized areas as defined by the latest decennial census and all MS4s which serve 10,000 people or more located outside urbanized areas and where the average population

density is 1,000 people/square mile or more are regulated small MS4s unless waiver criteria established by the department are met and a waiver has been granted by the department.

*c.* Permit coverage requirements for MS4s located in urbanized areas and serving 1,000 or more people and fewer than 10,000 people may be waived if the following requirements are met:

(1) The department has evaluated all waters of the United States that receive a discharge from the MS4, and for all such waters, the department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established total maximum daily load (TMDL) that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern. The pollutants of concern include biochemical oxygen demand, sediment or a parameter that addresses sediment (total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4.

(2) The department has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts including habitat and biological impacts.

*d.* Permit coverage requirements for MS4s located in urbanized areas and serving fewer than 1,000 people may be waived if the following requirements are met:

(1) The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program.

(2) The MS4 discharges any pollutants that have been identified as a cause of impairment of any water body to which the MS4 discharges and the department has determined that storm water controls are not needed based upon wasteload allocations that are a part of an EPA approved or established TMDL that addresses the pollutants of concern.

*e.* Permit coverage requirements for MS4s located outside of urbanized areas and serving 10,000 or more people may be waived if the following criterion is met:

The MS4 is not discharging pollutants which are the cause of the impairment to a water body designated by the department as impaired.

*f.* Should conditions under which the initial waiver was granted change, the waiver may be rescinded by the department and permit coverage may be required.

*g.* MS4 applications shall, at a minimum, demonstrate in what manner the applicant will develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. The manner in which the permittee will address the following items must be addressed in the application: public education and outreach on storm water impacts, public involvement and participation, illicit discharge detection and elimination, construction site storm water runoff control, postconstruction storm water management in new development and redevelopment, and pollution prevention for municipal operations. Measurable goals which the applicant intends to meet and dates by which the goals will be accomplished shall be included with the application.

**64.13(3)** Waivers for storm water discharge associated with small construction activity. The director may waive the otherwise applicable requirements in a general permit for storm water discharge from small construction activities as defined in 567—Chapter 60 when:

*a.* The value of the rainfall erosivity factor (“R” in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997; or

*b.* Storm water controls are not needed based on a TMDL approved or established by the EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration

of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutant(s) of concern includes sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity.

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

**567—64.14(455B) Transfer of title and owner or operator address change.**

**64.14(1)** *Permits issued under rule 567—64.2(455B), 567—64.3(455B), or 567—64.6(455B), except 64.6(1) “a”(5) and (6).* If title to any disposal system or part thereof for which a permit has been issued under these rules is transferred, the new owners shall be subject to all terms and conditions of the permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers and address changes must be reported to the department by mail.

**64.14(2)** *Permits issued under 64.6(1) “a”(5) and (6).* When the operator of a facility permitted under subparagraphs 64.6(1) “a”(5) and (6) changes, the department must be notified of the transfer within 30 days. When a discharge is covered by the general permit, the operator of record shall be subject to all terms and conditions of the permit. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer. Whenever the address of the operator is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all transfers and address changes must be reported to the department by mail.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 9553B, IAB 6/15/11, effective 7/20/11; ARC 2482C, IAB 4/13/16, effective 5/18/16]

Rules 567—64.3(455B) to 567—64.14(455B) are intended to implement Iowa Code section 455B.173.

**567—64.15(455B) General permits issued by the department.** The following is a list of general permits adopted by the department through the Administrative Procedure Act, Iowa Code chapter 17A, and the term of each permit.

**64.15(1)** Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, 2012, to October 1, 2017, as amended on March 26, 2014. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

**64.15(2)** Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, 2012, to October 1, 2017, as amended on August 12, 2015.

**64.15(3)** Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, 2012, to October 1, 2017, as amended on March 26, 2014. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

**64.15(4)** “Discharge from Private Sewage Disposal Systems,” NPDES General Permit No. 4, effective March 18, 2009, to March 17, 2011.

**64.15(5)** “Discharge from Mining and Processing Facilities,” NPDES General Permit No. 5, effective July 20, 2016, to July 19, 2021.

**64.15(6)** “Discharge Associated with Well Construction Activities,” NPDES General Permit No. 6, effective March 1, 2015, to February 28, 2020.

**64.15(7)** “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides,” NPDES General Permit No. 7, effective May 18, 2016, to May 17, 2021.

[**ARC 7569B**, IAB 2/11/09, effective 3/18/09; **ARC 8520B**, IAB 2/10/10, effective 3/17/10; **ARC 9365B**, IAB 2/9/11, effective 3/30/11; **ARC 9553B**, IAB 6/15/11, effective 7/20/11; **ARC 0261C**, IAB 8/8/12, effective 10/1/12; **ARC 1337C**, IAB 2/19/14, effective 3/26/14; **ARC 1912C**, IAB 3/18/15, effective 3/1/15; **ARC 2054C**, IAB 7/8/15, effective 8/12/15; **ARC 2572C**, IAB 6/8/16, effective 5/18/16; **ARC 2571C**, IAB 6/8/16, effective 7/20/16]

**567—64.16(455B) Fees.**

**64.16(1)** A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee or a permit fee or both as specified in 64.16(3). Certain individual facilities shall also be required to submit annual fees as specified in 64.16(3) “b.” Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. For a construction permit, an application fee must be submitted with the application. For General Permits Nos. 1, 2, 3 and 5, the applicant has the option of paying an annual permit fee or a multiyear permit fee at the time the Notice of Intent for coverage is submitted.

For individual storm water only permits, a one-time, multiyear permit fee must be submitted at the time of application. A storm water only permit is defined as an NPDES permit that authorizes the discharge of only storm water and any allowable non-storm water as defined in the permit. For all other non-storm water NPDES permits and operation permits, the applicant must submit an application fee at the time of application and the appropriate annual fee on a yearly basis. A non-storm water NPDES permit is defined as any individual NPDES permit or operation permit issued to a municipality, industry, semipublic entity, or animal feeding operation that is not an individual storm water only permit. If a facility needs coverage under more than one NPDES permit, fees for each permit must be submitted appropriately.

Fees are nontransferable. Failure to submit the appropriate fee at the time of application renders the application incomplete, and the department shall suspend processing of the application until the fee is received. Failure to submit the appropriate annual fee may result in revocation or suspension of the permit as noted in 64.3(11) “f.”

**64.16(2)** Payment of fees. Fees shall be paid by check or money order made payable to the “Iowa Department of Natural Resources.”

For facilities needing coverage under both a storm water only permit and a non-storm water NPDES permit, separate payments shall be made according to the fee schedule in 64.16(3).

**64.16(3)** Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES general permits, the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee . . . . . \$175(per year)

or

Five-year Permit Fee . . . . . \$700

Four-year Permit Fee . . . . . \$525

Three-year Permit Fee . . . . . \$350

All fees are to be submitted with the Notice of Intent for coverage under the general permit.

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) Discharge from Private Sewage Disposal Systems, NPDES Permit No. 4. No fees shall be assessed.

(5) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5.

Annual Permit Fee . . . . .	\$125 (per year)
or	
Five-year Permit Fee . . . . .	\$500
Four-year Permit Fee . . . . .	\$400
Three-year Permit Fee . . . . .	\$300

New facilities seeking General Permit No. 5 coverage shall submit fees with the Notice of Intent for coverage. Maximum coverage is for five years. Coverage may also be obtained for four years, three years, or one year, as shown in the fee schedule above. Existing facilities shall submit annual fees by August 30 of every year, unless a multiyear fee payment was received in an earlier year. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

b. Individual NPDES and operation permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For permits that authorize the discharge of only storm water associated with industrial activity and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

(2) For permits that authorize the discharge of only storm water from municipal separate storm sewer systems and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

(3) For operation and non-storm water NPDES permits not subject to subparagraphs (1) and (2), a single application fee of \$85 as established in Iowa Code section 455B.197 is due at the time of application. The application fee is to be submitted with the application forms (as required by 567—Chapter 60) at the time of a new application, renewal application, or amendment application. Before an approved amendment request submitted by a facility holding a non-storm water NPDES permit can be processed by the department, the application fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits when an amendment request is initiated by the director, when the requested amendment will correct an error in the permit, or when there is a transfer of title or change in the address of the owner as noted in 567—64.14(455B).

(4) For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an annual fee as established in Iowa Code section 455B.197 is due by August 30 of each year.

(5) For every municipal water treatment facility with a non-storm water NPDES permit, no fee is charged (as established in Iowa Code section 455B.197).

(6) For a new facility, an annual fee as established in Iowa Code section 455B.197 is due 30 days after the new permit is issued.

c. Wastewater construction permit fees. A single construction permit fee as established in Iowa Code section 455B.197 is due at the time of construction permit application submission.

**64.16(4)** Fee refunds for storm water general permit coverage—pilot project. Rescinded IAB 10/16/02, effective 11/20/02.

**64.16(5)** “Discharge Associated with Well Construction Activities,” NPDES General Permit No. 6. No fees shall be assessed.

**64.16(6)** “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” NPDES General Permit No. 7. No fees shall be assessed.

**64.16(7) Fee refunds.**

*a.* Individual and general permit application, permit, and annual fees may be refunded, completely or in part, at the discretion of the director. Permittees who wish to receive fee refunds should notify the department in writing. Fees may be refunded under various circumstances, including, but not limited to:

(1) A duplicate fee was submitted (for example, two annual fees for the same permit are paid in the same fiscal year).

(2) A fee was overpaid.

(3) A fee was submitted but is not required as part of the permit application or renewal (for example, an individual annual permit fee was submitted for a discontinued permit, a general permit NOI fee was submitted for an individual permit, or an amendment fee was submitted for a permit that cannot be amended).

(4) An application is returned to the applicant by the department without decision.

*b.* Fees shall not be refunded under any of the following conditions:

(1) If the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued or ceased.

(2) If a permit is amended.

(3) If a permit application is withdrawn by the applicant or denied by the department pursuant to 64.5(1).

[Editorial change: IAC Supplement 2/11/09; **ARC 7625B**, IAB 3/11/09, effective 4/15/09; **ARC 8520B**, IAB 2/10/10, effective 3/17/10; **ARC 9365B**, IAB 2/9/11, effective 3/30/11; **ARC 9553B**, IAB 6/15/11, effective 7/20/11; **ARC 2482C**, IAB 4/13/16, effective 5/18/16]

**567—64.17(455B) Validity of rules.** If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

**567—64.18(455B) Applicability.** This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, the provisions of this chapter concerning NPDES permits which relate to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply to animal feeding operations which are required to apply for and obtain an NPDES permit to the extent that such requirements are not inconsistent with 567—Chapter 65. [ARC 1627C, IAB 9/17/14, effective 10/22/14]

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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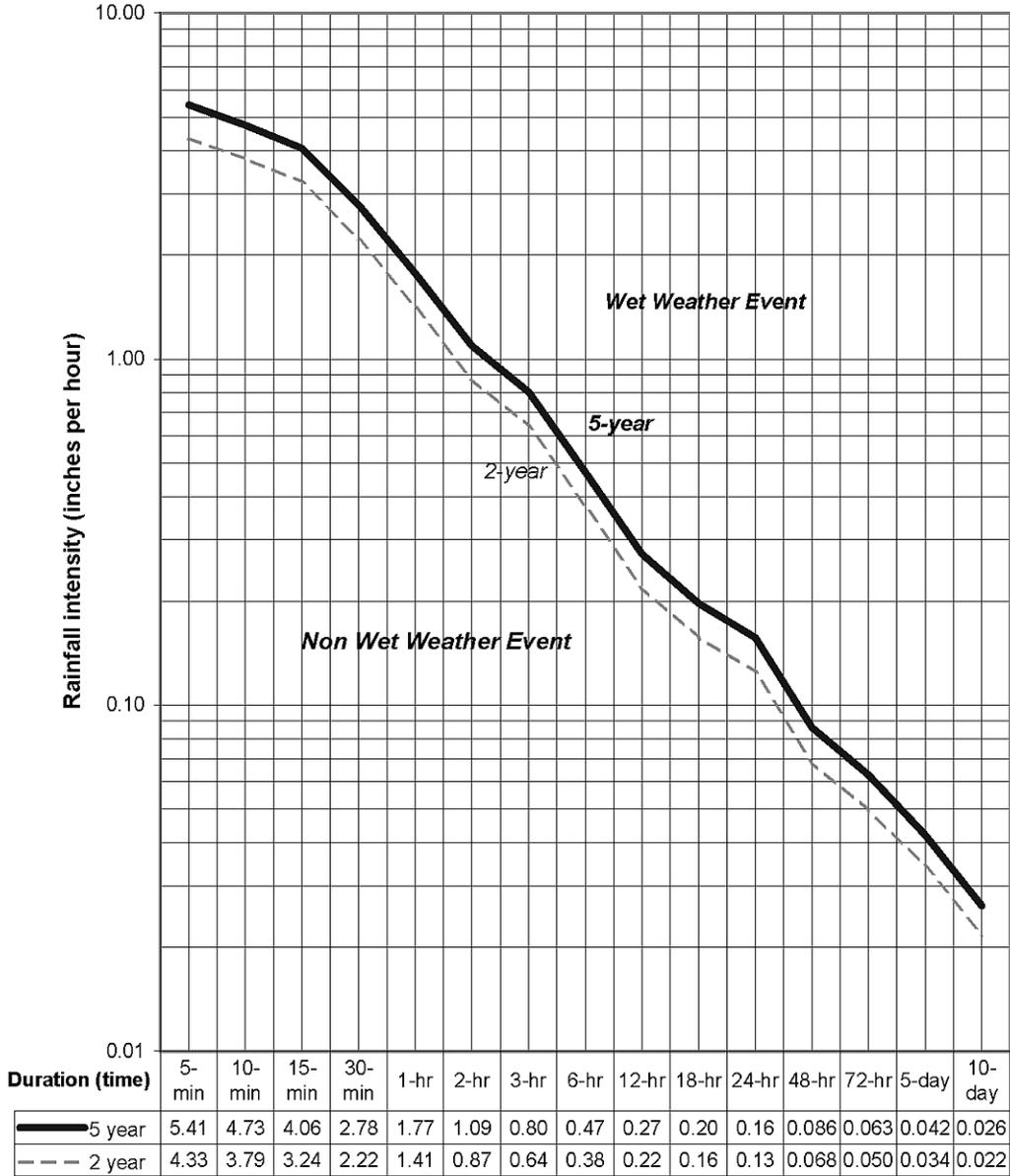
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<sup>1</sup> Effective date of 64.2(9)“c” delayed 70 days by the Administrative Rules Review Committee. The 70-day delay of effective date of 64.2(9)“c” was lifted by the Administrative Rules Review Committee on 7/31/86.

### APPENDIX A Rainfall Intensity - Duration - Frequency Curve (5 and 2 year Return Intervals)

Data Source: Rainfall Frequency Atlas of the Midwest, Illinois State Water Survey, 1992.



Rainfall intensity data points (inches per hour)

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

CHAPTER 105  
ORGANIC MATERIALS COMPOSTING FACILITIES

**567—105.1(455B,455D) General.** This chapter shall apply to the composting of solid and yard wastes. Composting facilities may include vermicomposting, turned windrows, aerated static piles, aerated in-vessel systems, or other methods approved by the department. Composting facilities existing as of June 19, 2002, must comply with the requirements of this chapter within two years or by the permit renewal date, whichever is later.

**105.1(1) Definitions.** For the purposes of this chapter, the following definitions apply:

*“Agricultural waste”* means organic materials normally discarded during the production of plants and animals from agronomic, horticultural or silvicultural operations. “Agricultural waste” includes but is not limited to manure, crop residuals, bedding, and other vegetative by-products produced during farm processing. Dead animals are not included.

*“Best management practices”* means the practices described in the most recent version of the Compost Facility Operating Guide published by the United States Composting Council or other best management practices as approved by the department.

*“Bulking agent”* means a material that contributes structure and porosity, usually a dry, rigid material such as shredded wood or tire chips.

*“Compostable”* means an organic material that undergoes degradation by biological processes during composting to yield carbon dioxide, water, inorganic compounds and biomass.

*“Compostable plastics”* means a plastic that undergoes degradation by biological processes at a rate consistent with other known compostable materials and leaves no visually distinguishable or toxic residue. Testing according to ASTM D6400-00 criteria should be used to designate compostable plastics.

*“Composting”* means the accelerated biological decomposition of organic matter under managed aerobic conditions resulting in a stable, innocuous final product.

*“Composting facility”* means all related receiving, processing, production, curing, and storage areas and necessary roads, buildings, equipment, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water.

*“Compost leachate”* means a liquid that has percolated through or drained from compost.

*“Compost maturity,”* according to Test Methods for the Examination of Composting and Compost (TMECC), means an organo-chemical state of compost that indicates the presence or lack of organic phytotoxic chemicals in stable compost. Measurements for maturity are based on the amount of volatile fatty acids present. Mature compost will have fatty acids of no more than 2 mg/g dry weight solids or as specified in the most recent version of TMECC.

*“Compost stability,”* according to TMECC, means a stage in the composting process when microbial activity is diminished with the corresponding decrease of available organic carbon and other energy sources. Stability is measured through respiration. Stable compost will have oxygen uptake rates in the range of 0-3.5 mg O<sub>2</sub>/g BVS/hr. or as specified in the most recent version of TMECC.

*“Cured compost”* means compost that is both stable and mature according to the definitions found in this chapter.

*“Curing”* means a process in which compost is further monitored to control pathogen regrowth while increasing stability and maturity.

*“Finished compost”* means cured and, if necessary, screened or refined.

*“Household organic waste”* means general household compostable items such as food residuals and paper produced on premises.

*“Infectious waste”* means waste that is infectious, including but not limited to contaminated sharps, cultures, and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospitals or research laboratories.

*“Municipality”* means any city or county in the state.

*“Nuisance”* means whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to unreasonably interfere with the

comfortable enjoyment of life or property, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof.

“*Organic materials*” means any material of animal or plant origin.

“*Premises*” means a geographically contiguous property owned by a generator or noncontiguous property owned by a generator and that is connected by a controlled right-of-way to which the public does not have access. Two or more pieces of property that are geographically contiguous and divided by public or private right-of-way are a single premises.

“*Small compost facilities*” means facilities meeting the requirements set forth in rule 567—105.5(455B,455D).

“*Solid waste composting*” means the composting of any organic material with or without yard waste. For the purposes of this chapter, facilities exempt under 567—105.2(455B,455D) are not considered solid waste composting facilities. In addition, facilities in compliance with 567—105.4(455B,455D), 567—105.5(455B,455D) or 567—105.6(455B,455D) are not considered solid waste composting facilities. Only facilities that are required to obtain or have a permit are considered solid waste composting facilities.

“*Vector*” means a carrier organism that is capable of transmitting a pathogen from one organism to another. Vectors include, but are not limited to, birds, rats and other rodents, and insects.

“*Yard waste*” means vegetative matter such as grass clippings, leaves, garden waste, brush and trees, and any clean wood waste which is necessary as bulking agent and which is free of coatings and preservatives.

**105.1(2)** There are three different levels of compost facility regulation:

- a. Exempt operations in accordance with 567—105.2(455B,455D).
- b. Permit by rule. Yard waste composting facilities are exempt from permitting if operated in conformance with 567—105.3(455B,455D) and 567—105.4(455B,455D). Facilities that compost dead farm animals are exempt from permitting if operated in conformance with 567—105.3(455B,455D) and 567—105.6(455B,455D). Small quantity solid waste compost operations as defined in 567—105.5(455B,455D) are exempt from permitting if operated in conformance with 567—105.3(455B,455D) and 567—105.5(455B,455D).
- c. Solid waste composting. Solid waste composting facilities must obtain a permit from the department. Solid waste composting facilities involving municipal sewage sludge shall also operate in conformance with 567—Chapter 67.

**105.1(3)** Burial of yard waste at a sanitary landfill is prohibited, except in the following circumstances:

- a. When the yard waste is collected for disposal as a result of a severe storm and the yard waste originates in an area declared to be a disaster area in a declaration issued by the President of the United States or the governor.
- b. When the yard waste is collected for disposal to control, eradicate, or prevent the spread of insect pests, tree and plant diseases, or invasive plant species.
- c. When the yard waste is disposed of in a sanitary landfill that operates a methane collection system that produces energy. A methane collection system that burns landfill gas without using the energy for a purpose other than reducing the amount of methane released is not considered to be a system that produces energy.

**105.1(4)** Each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated.

**105.1(5)** Yard waste that has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting. Yard waste accepted by a sanitary landfill for the purpose of soil conditioning shall be used only on finished areas of the landfill that have received the final earthen cover, developed areas with intermediate cover, and restoration of soil borrow areas. Burning of yard waste at a sanitary disposal project is prohibited.

**105.1(6)** Land application of yard waste shall be in conformance with 567—Chapter 121.  
[ARC 2692C, IAB 8/31/16, effective 10/5/16]

**567—105.2(455B,455D) Exemptions.** The following projects are exempt from this chapter. This exemption is not a defense to a nuisance action brought pursuant to Iowa Code chapter 657.

**105.2(1)** Yard waste or household organic waste composted and used on the same premises where it originated.

**105.2(2)** Composting facilities involving agricultural waste, excluding dead animals, and clean wood waste which is necessary as bulking agent and which is free of coatings and preservatives. Use of any other materials as bulking agent shall require prior approval by the department. If agricultural waste is mixed with other wastes including dead animals for the purpose of composting, then this chapter shall apply unless the other wastes have been preapproved by the department as necessary as bulking agent.

**105.2(3)** Yard waste, household organic waste, and agricultural waste generated, composted together in any combination and used on the same premises where they originated.

**567—105.3(455B,455D) General requirements for all composting facilities not exempt pursuant to 567—105.2(455B,455D).** This rule applies to all composting facilities not exempt under 567—105.2(455B,455D). Facilities exempt from permitting that do not operate in accordance with this chapter may as a result be required to obtain a solid waste composting permit. Composting facilities shall also operate in accordance with all applicable city and county ordinance and permitting requirements.

**105.3(1)** The composting facility shall be 500 feet from any existing inhabited residence, not including the residence of the person owning/operating the compost facility, at the time the permit application was received by the department. Composting must be done outside of wetlands, at least 200 feet from public wells, 100 feet from private wells, 50 feet from property lines, and 100 feet from flowing or intermittent streams, lakes, or ponds. Composting done inside the 100-year flood plain shall be in accordance with all local and department regulations including 567—71.5(455B). Sediment ponds, engineered wetlands or other constructed waterways for the purpose of pollution control are excluded from this requirement.

**105.3(2)** Composting shall be performed in a manner that minimizes the formation of compost leachate by the facility.

**105.3(3)** Measures shall be taken to prevent water from running onto the facility from adjacent land and to prevent compost leachate and runoff from leaving the composting facility. Runoff from the composting facility must be properly managed.

**105.3(4)** Facilities shall be designed, constructed, and maintained so as to minimize ponding of water or liquids. Any ponding that does occur shall be corrected through routine facility maintenance within 48 hours after the termination of the event causing the ponding.

**105.3(5)** Composting must be done on an all-weather surface of compacted soil, compacted granular aggregates, asphalt, concrete or similar relatively impermeable material that will permit accessibility during periods of inclement weather and prevent contamination of surface water and groundwater.

**105.3(6)** Solid waste which cannot be composted or which is removed during processing shall be properly disposed of. Infectious waste shall not be accepted for composting at any composting facility unless approved by the department in writing.

**105.3(7)** Solid waste materials shall be managed through the entire process in accordance with best management practices to minimize conditions such as odors, dust, noise, litter and vectors which may create nuisance conditions or a public health hazard.

**105.3(8)** Storage of cured or finished compost shall be limited to 18 months. The 18-month period may be extended with prior written approval from the department.

**105.3(9)** If compost is offered for sale as a soil conditioner or fertilizer, the compost must be registered by the department of agriculture and land stewardship under Iowa Code chapter 200, Fertilizers and Soil Conditioners. Sale shall be in compliance with all applicable federal and state laws and local ordinances and regulations.

**105.3(10)** Compost shall not be applied to land, sold or given away unless the concentration of human-made inert materials such as glass, metal, and plastic is less than 1.5 percent by dry weight.

Compost shall not be applied to land, sold or given away unless the size of any human-made inert materials is less than 13 mm (0.512 inches).

**567—105.4(455B,455D) Specific requirements for yard waste composting facilities.** Yard waste composting facility operators are encouraged to be trained, tested, and certified by a department-approved certification program upon approval of such a program by the department.

**105.4(1)** Before the composting facility commences operation, the department and the field office of the department serving the composting facility's location shall be notified in writing of the following:

- a. The location of the composting facility.
- b. Legal description of the facility.
- c. Landowner's name, telephone number, and mailing address.
- d. Responsible party's name, telephone number, and mailing address.
- e. Annual capacity of the facility.
- f. Method of composting to be employed.
- g. Source of the yard waste and any necessary bulking agent. This description must include a description of service area defined in terms of municipalities wherein sources of the material are located.

**105.4(2)** The facility shall have a permanent sign posted at the entrance specifying:

- a. Name of operation.
- b. Operating hours.
- c. Materials which are accepted or the statement "All materials must have prior approval."
- d. Telephone number of 24-hour emergency contact person.

**105.4(3)** The area of the composting facility must be large enough for the volume of yard waste composted.

**105.4(4)** Yard waste must be taken out of containers before composting, unless the containers are compostable.

**105.4(5)** Aerobic conditions shall be maintained in accordance with best management practices.

**105.4(6)** An annual report for the previous fiscal year beginning July 1 and ending June 30 shall be submitted to the department by July 31 of each year. The report shall be submitted using Form 542-3276C, provided by the department, and all applicable sections of the form must be completed.

These records shall be maintained by the facility for a period of three years for inspection and evaluation by the department.

**567—105.5(455B,455D) Small composting facilities receiving off-premises materials.** Small composting facilities are exempt from obtaining a solid waste composting permit provided the facility complies with 567—105.3(455B,455D) and 567—105.5(455B,455D).

**105.5(1) Acceptable materials and amounts.** Yard waste and food residuals may be received from off premises at a total rate of two tons or less per week for composting either singly, in combination, or with agricultural waste. Any clean wood waste free of coating and preservatives may be used as a bulking agent. The two tons per week combined weight limit does not apply to bulking agent. However, the amount of bulking agent received must be appropriate for the amount of compostable materials received. Facilities composting over two tons of food residuals and yard waste per week in any combination from off premises must obtain a permit (Form 50A (542-1542A)) and adhere to the solid waste composting requirements stipulated in 567—105.7(455B,455D) through 567—105.14(455B,455D). If only agricultural wastes are collected and composted, this rule does not apply. If only yard wastes are collected and composted, this rule does not apply.

**105.5(2) Notification.** Before the composting facility commences operation, the department and the field office of the department serving the composting facility's location shall be notified in writing of the following:

- a. The location of the composting facility.
- b. Legal description of the facility.
- c. Landowner's name, telephone number, and mailing address.
- d. Responsible party's name, telephone number, and mailing address.

- e. Annual capacity of the facility.
- f. Method of composting to be employed.
- g. Source of the feedstock and any necessary bulking agent. This description must include a description of service area defined in terms of municipalities wherein sources of the material are located.

**105.5(3) Signage.** The facility shall have a permanent sign posted at the entrance specifying:

- a. Name of operation.
- b. Operating hours.
- c. Materials which are accepted or the statement “All materials must have prior approval.”
- d. Telephone number of 24-hour emergency contact person.

**105.5(4) Reporting.** An annual report for the previous fiscal year beginning July 1 and ending June 30 shall be submitted to the department by July 31 of each year. The report shall be submitted using Form 542-3276C, provided by the department, and all applicable sections of the form must be completed.

These records shall be maintained by the facility for a period of three years for evaluation by the department.

**567—105.6(455B,455D) Specific requirements for composting of dead farm animals.** Operators of dead farm animal composting facilities are encouraged to be trained, tested, and certified by a department-approved certification program upon approval of such a program by the department. A facility that composts dead farm animals is exempt from permitting if the following operating requirements are met and the facility is in compliance with 567—105.3(455B,455D). Businesses or individuals that are neither the owner nor operator of any of the sites where dead farm animals are generated and that want to compost dead farm animals must obtain a permit in accordance with 567—105.8(455B,455D).

**105.6(1)** Before commencing operation, the operator is encouraged to notify the department field office with jurisdiction over the facility. The department may provide general assistance, such as locating bulking agents and providing advice in regard to siting considerations such as pad location, sizing and design, to facilities notifying the department and requesting assistance.

**105.6(2)** Farm animals known or suspected to have died from an infectious disease that can be spread by scavengers or insects or that died from a reportable disease shall be disposed of in accordance with the requirements of the Iowa department of agriculture and land stewardship and the department.

**105.6(3)** Transportation vehicles shall be constructed to prevent the release of mortality contaminated materials under normal operating conditions. The most direct haul route that avoids biosecurity risks shall be utilized.

**105.6(4)** The composting facility shall be designed to accommodate at least the average annual death loss for all sites using the composting facility. Facility design shall also take into account space requirements for managing raw materials (e.g., additional bedding and bulking agents needed for mortality composting) and finished compost.

**105.6(5)** Animal mortalities from a catastrophic event, such as a fire or electrical outage, shall not be composted until the department field office is contacted and arrangements are approved for the appropriate treatment or disposal of the animals. The facility shall contact the department field office with jurisdiction over the facility as soon as possible after such a catastrophic event occurs to receive approval of the disposal option.

**105.6(6)** Dead farm animals shall be incorporated into the composting process within 24 hours of death. An adequate base layer (from 12 to 24 inches thick, depending on the size and number of dead farm animals) with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times to control mortality leachate and odors and to prevent access by scavenging domestic and wild animals.

**105.6(7)** Dead farm animals shall not be removed from composting until all soft tissue is fully decomposed.

**105.6(8)** Compost (including bones that have not fully decomposed) shall be applied to cropland in a manner that minimizes the runoff into a water of the state. Application of the compost to lands other than cropland shall require prior approval by the department.

**567—105.7(455B,455D) Permit requirements for solid waste composting facilities.**

**105.7(1) *Permit required.*** Solid waste composting facilities shall not be constructed or operated without a permit from the department. As part of the sanitary disposal project permit issuance procedures, these facilities must meet comprehensive planning requirements. Since these facilities serve as alternatives to landfilling, comprehensive planning requirements are minimal and are satisfied through the information provided in the permit application submittal and by compliance with the reporting requirements set forth in 567—105.12(455B,455D). If a solid waste composting facility is formally part of a planning area's integrated waste management system, the operator must participate in that area's planning activities and the facility must be included in all plan submittal documents. The issuance of a permit by the department in no way relieves the applicant of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules or other requirements applicable to the construction and operation of a solid waste composting facility.

**105.7(2) *Construction and operation.*** All solid waste composting facilities shall be constructed and operated according to the plans and specifications as approved by the department and the conditions of the permit. The approved plans and specifications shall constitute a term of the permit.

**105.7(3) *Transfer of title and permit.*** If title to a solid waste composting facility is transferred, then the department shall transfer the permit within 60 days if the department finds that the following requirements have been met:

*a.* The title transferee has applied in writing to the department within 30 days of the transfer of title to request a transfer of the permit.

*b.* The permitted facility is in compliance with the rules and conditions of the permit.

**105.7(4) *Permit conditions.*** Any permit may be issued subject to conditions specified in writing by the department that are necessary to ensure that the sanitary disposal project can be constructed and operated in compliance with Iowa Code chapters 455B and 455D and these rules.

**105.7(5) *Effect of revocation.*** If a permit held by any public or private agency for a solid waste composting facility is revoked by the director, then no new permit shall be issued to that agency for that sanitary disposal project for a period of one year from the date of revocation. This subrule shall not prohibit the issuance of a permit for the sanitary disposal project to another public or private agency.

**105.7(6) *Inspection prior to commencing operation.*** The department shall be notified 30 days prior to scheduled completion of a solid waste composting facility and when the construction has been completed. The department shall then complete an inspection of the facility to determine if the sanitary disposal project has been constructed in accordance with the plans and specifications and permit requirements. No solid waste shall be accepted by the facility until it has been inspected and approved by the department.

**105.7(7) *Duration and renewal of permits.*** Solid waste composting facility permits shall be issued for a period of three years, and are renewable for similar terms, unless otherwise specified pursuant to 105.7(5).

**105.7(8) *Request for and approval of permit renewal.*** Requests for permit renewals shall be in writing and must be filed at least 90 days before the expiration of the current permit and submitted on a Form 50A to the department. The department may request that additional information be submitted for review in order to make a permit renewal decision. Comprehensive plan update requirements are satisfied through the information provided in the permit renewal application submittal and by compliance with the reporting requirements set forth in 567—105.12(455B,455D). If a solid waste composting facility is formally part of a planning area's integrated waste management system, the operator must participate in that area's plan update submittals. The department shall renew the permit if, after a review and inspection of the facility and its compliance history, the department finds that the facility is in compliance with its current permit and these rules. If the facility is found not to be in compliance with its current permit and these rules, then the sanitary disposal project shall be brought into compliance, or placed on a compliance schedule approved by the department, before the permit is renewed pursuant to 105.7(5).

**105.7(9) Facility expansion.** Prior to the facility's expanding the amount or types of materials accepted, the facility shall make a request in writing and obtain approval from the department for an amendment to the permit.

**105.7(10) Process change.** Prior to a change in the facility's process, the facility shall make a request in writing and obtain approval from the department for an amendment to the permit.

**567—105.8(455B,455D) Permit application requirements for solid waste composting facilities.**

**105.8(1)** A permit application for a new facility shall include a completed Form 50A (542-1542A) and a map or aerial photograph. This map or aerial photograph shall identify:

- a. The boundaries of the facility.
- b. Wells, streams, creeks, rivers, ponds, sinkholes, and drainage wells.
- c. North or other principal compass points.
- d. Zoning and land use within one-half mile of the closest portion of the facility.
- e. Haul routes to and from the facility with load limits or other restrictions.
- f. Homes and buildings within one-half mile of the closest portion of the facility.
- g. Section lines or other legal boundaries.
- h. Any nearby runway used or planned to be used by turbojet or piston-type aircraft at FAA-certified airports.

**105.8(2)** Design requirements. Design documents must be prepared by an Iowa-licensed professional engineer (Iowa Code chapter 542B) and must include the following:

- a. Equipment to be installed, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water, and dimensions, details, and capacities of the proposed receiving, processing, production, curing, and storage areas.
- b. Design calculations justifying the size of the composting areas. The areas for composting must be adequate for the volume of solid waste being composted in accordance with best management practices.
- c. Descriptions, specifications, and capacities of proposed equipment to be used in composting.
- d. Flow diagram of all operating steps.
- e. Composition of the operating surface. Receiving, processing, production, and curing must take place on a constructed, impervious base that can support the load of the equipment used under all weather conditions. The permeability coefficient of the base must be less than  $1 \times 10^{-7}$  cm/sec (0.00028 feet/day). Storage areas for cured/finished compost must permit accessibility during periods of inclement weather.
- f. Dimensions, details, and capacities of storm water run-on and runoff management systems of the composting facility. The facility may need a storm water permit.
- g. Proof of the applicant's ownership of the site and legal entitlement to use the site as a composting facility.

**105.8(3)** The operating plan shall provide the following:

- a. Method of composting.
- b. Duration of composting with a time frame for receiving, processing, production, curing, and storage.
- c. Description of storage of raw materials including quantity and types.
- d. Description of the types, amounts, and sources of wastes to be received and processed daily. This description must include a description of service area defined in terms of municipalities wherein sources of the material are located.
- e. Description of the aeration method and the aeration frequency to be used to maintain aerobic conditions in accordance with best management practices.
- f. Description of the methods to minimize and manage odors, dust, vectors, noise and litter.
- g. Description of the specific procedures to be followed in case of equipment breakdown, maintenance downtime, and fire in equipment, composting material or buildings to include methods to be used to remove or dispose of accumulated waste and burned or damaged material.
- h. Plans for using or marketing the finished compost.

- i.* Method(s) of disposing of collected storm water.
- j.* Method(s) of maintaining storm water management systems to maintain design volume and to locate and repair leaks in the system.
- k.* Description of the monitoring, sampling, and analysis procedures and schedule for testing the composting process and product including sampling frequency, sample size and number, and sample locations. A facility-specific time-temperature monitoring plan for pathogen kill shall be included in the operating plan.

**567—105.9(455B,455D) Specific operating requirements for permitted solid waste composting facilities.** In addition to the following, all permitted solid waste composting facilities shall comply with 567—105.3(455B,455D).

**105.9(1) Access.**

- a.* Access to the facility shall be restricted with a lockable gate at the entrance to the facility.
- b.* Access to the facility shall be allowed only when an employee, agent or representative of the facility is on duty.
- c.* Emergency access to the facility shall be provided. Fire lanes shall be maintained to provide access for firefighting equipment as required by the local fire department.

**105.9(2) The facility shall have a permanent sign posted at the entrance specifying:**

- a.* Name of operation.
- b.* Operating hours.
- c.* Materials which are accepted or the statement “All materials must have prior approval.”
- d.* Telephone number of 24-hour emergency contact person.

**105.9(3) All materials received must be incorporated into the composting process within 24 hours of receipt unless storage of these materials is specified in the plan and approved by the department.**

**105.9(4) Sample collection, preservation, and analysis must be done in a manner which ensures valid and representative results. Facilities should follow the most recent version of the Test Methods for the Examination of Composting and Compost guidelines or other testing procedures as approved by the department. Unless otherwise proposed in the operating plan and authorized in the permit, the permit holder shall test at a minimum:**

- a.* Twice weekly temperature readings of compost piles, batches, and windrows. Compost must be held at a temperature above 55 degrees Celsius (131 degrees Fahrenheit) for an appropriate amount of time, in accordance with best management practices, in order to achieve pathogen reduction.
- b.* Weekly moisture levels of compost piles, batches, and windrows.
- c.* Testing of the finished product. Compost shall not be applied to land, sold or given away for household use unless the following requirements are met. If the following requirements are not met, compost must be applied according to 567—Chapter 121.

(1) The density of fecal coliform shall be less than 1000 most probable number (MPN) per gram of total solids (dry weight basis) or the density of *Salmonella* sp. bacteria in compost shall be less than three MPN per four grams of total solids (dry weight basis).

(2) The concentrations of human-made inert materials comply with 105.3(10), and the concentrations of all metals are less than the following:

Metal	Concentration mg/kg dry weight
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	36
Zinc (Zn)	2800

**567—105.10(455B,455D) Operator certification for permitted solid waste composting facilities.** All permitted solid waste composting facilities shall meet the following requirement. The person responsible for daily operation of the facility shall be certified by a department-approved program upon approval of such a program by the department. The certification must be renewed every three years.

**567—105.11(455B,455D) Record-keeping requirements for solid waste composting facilities.** All permitted solid waste composting facilities shall meet the following requirements. The following records shall be maintained by the facility for a period of three years and at the facility at all times and shall be submitted to the department upon request:

1. Analytical results described in 105.9(4). These results shall be recorded on a department-approved reporting form.
2. Types and weight of compostable materials and bulking agent, in tons, accepted at the facility annually.
3. Weight of compost, in tons, removed from the facility annually.
4. A copy of the plan, the permit, annual reports, and the current storm water pollution prevention plan.

**567—105.12(455B,455D) Reporting requirements for solid waste composting facilities.** An annual report for the previous fiscal year beginning July 1 and ending June 30 shall be submitted to the department by July 31 of each year by all permitted solid waste composting facilities. The report shall be submitted using Form 542-3276C, provided by the department, and all applicable sections of the form must be completed.

**567—105.13(455B,455D) Closure requirements for solid waste composting facilities.** All permitted solid waste composting facilities shall meet the following requirements. For each composting facility, a closure plan shall be submitted to the department containing a description of the steps necessary to close the facility. A permit shall not be issued unless the closure plan is approved.

**105.13(1)** An updated closure plan, including a schedule for closure, shall be submitted to the department at least 60 calendar days prior to the proposed termination date for the facility.

**105.13(2)** Unless an alternative schedule is approved by the department, within six months of the facility's ceasing operation, all waste and unfinished and finished compost shall be removed from the premises.

**105.13(3)** Facilities beneficially reusing material in order to comply with 105.13(2) are required to submit in written form all agreements for this reuse. This beneficial reuse shall include names of parties involved, amount of material utilized, and cost per ton. The closure plan will not be approved until these agreements are submitted to and approved by the department. The department shall also be notified of any changes in the agreements.

**105.13(4)** Upon closure, all permitted solid waste composting facilities shall perform the following activities:

- a. Properly dispose of all organic material, solid waste and litter at the premises.
- b. Lock all doors, gates, entrances, and exits.
- c. Report the completion of these activities to the local political jurisdiction, the department, and the department field office serving the composting facility.

**567—105.14(455B,455D) Composting facility financial assurance.** Permitted solid waste composting facilities receiving more than 5,000 tons of feedstock annually, bulking agent excluded, must obtain and submit a financial assurance instrument to the department for waste materials received and stockpiled by the facility in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any preprocessed and postprocessed stockpiled materials that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**105.14(1)** *No permit without financial assurance.* The department shall not issue or renew a permit to an owner or operator of a solid waste composting facility until a financial assurance instrument has been submitted to and approved by the department.

**105.14(2)** *Proof of compliance.* Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after June 19, 2002, or at the time of application for a permit for a new solid waste composting facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**105.14(3)** *Use of one financial assurance instrument for multiple permitted activities.* Solid waste composting facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**105.14(4)** *Financial assurance amounts required.* The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and must account for at least the following factors determined by the department to be minimal necessary costs for closure:

*a.* Transportation costs, which include the cost to load the material, and total tip fees to properly dispose of the maximum tonnage of received materials that could be managed and stockpiled by the compost facility. Also included shall be the costs of properly removing any wastewater held at the facility, or

*b.* Cost of a beneficial reuse option, approved pursuant to subrule 105.13(3), for the total amount of material that could be managed and stockpiled by the composting facility. If the total amount of material will not be beneficially reused, the remainder of the cost shall be calculated according to paragraph 105.14(4)“a.” Also included shall be the costs of properly removing any wastewater held at the facility.

*c.* The costs for maintaining financial assurance pursuant to any other provisions of 567—Chapters 100 to 123, if any, in accordance with subrule 105.14(3).

**105.14(5)** *Acceptable financial assurance instruments.* The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 105.14(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

*a. Secured trust fund.* The owner or operator of a solid waste composting facility or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to the provision of proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to

cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

*b. Local government dedicated fund.* The owner or operator of a publicly owned solid waste composting facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the solid waste composting facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

*c. Surety bond.* A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

*d. Letter of credit.* The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 105.14(5) "a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

*e. Corporate guarantee.* An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 105.14(5) "a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or
2. A ratio of less than 1.5 comparing total liabilities to net worth; or
3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.
2. A letter signed by a certified public accountant and based upon a certified audit that:
  - Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 105.14(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
  - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 105.14(5) "e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

*f. Local government guarantee.* An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 105.14(5) "a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 105.14(5) "f"(2) "2," if applicable, and the requirements of subparagraphs 105.14(5) "f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 105.14(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 105.14(5) "f"(2), (3), (4) and (5).

**105.14(6) *Financial assurance cancellation and permit suspension.***

*a.* A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

*b.* A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

*c.* Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

*d.* The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to rule 567—105.13(455B,455D) and subrule 105.14(4).

*e.* If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

*f.* An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

*g.* The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

**567—105.15(455B,455D) Variances.** A request for a variance must be submitted in writing to the department pursuant to 561—Chapter 10.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.9.

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CHAPTER 113  
SANITARY LANDFILLS FOR MUNICIPAL  
SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF  
NONHAZARDOUS WASTES

[Prior to 12/11/02, see 567—Chs 102, 103, 110]

**567—113.1(455B) Purpose.** The purpose of this chapter is to protect human health and the environment through the implementation of minimum national standards pursuant to the Resource Conservation and Recovery Act (“RCRA” or “the Act”) for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act for MSWLFs that are used to dispose of sewage sludge.

This chapter details the permitting, siting, design, operating, monitoring, corrective action, reporting, record-keeping, closure, and postclosure requirements for all sanitary landfills accepting municipal solid waste (MSW).

Groundwater is a precious natural resource. The vast majority of citizens in Iowa depend on groundwater as a drinking water source. Agriculture, industry and commerce also depend heavily on groundwater. It is essential to the health, welfare, and economic prosperity of all citizens in Iowa that groundwater is protected and that the prevention of groundwater contamination is of paramount importance. Therefore, the intent of this chapter is to prevent groundwater contamination from MSWLF units to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

**567—113.2(455B) Applicability and compliance.**

**113.2(1)** All sanitary landfills accepting municipal solid waste must comply with the provisions of this chapter.

**113.2(2)** These rules do not encompass the beneficial use of by-products as alternative cover material. For rules pertaining to the beneficial use of by-products as alternative cover material, see 567—Chapter 108.

**113.2(3)** These rules do not encompass the management and disposal of special wastes. For rules pertaining to the management and disposal of special wastes, see 567—Chapter 109.

**113.2(4)** This chapter does not apply to MSWLF units that did not receive waste after October 9, 1994. The closure permit issued or the rules in effect at the time of closure shall govern postclosure activities for such MSWLF units.

**113.2(5)** This chapter does not apply to MSWLF units that stop receiving waste before October 1, 2007, and are not contiguous with MSWLF units that will continue to accept waste after October 1, 2007. For the purpose of this subrule, contiguous MSWLF units are those that adjoin, abut or have a common boundary or edge with one another or that utilize the same groundwater monitoring network system. The permit issued and the rules in effect at the time waste acceptance ceased shall govern postclosure activities for such MSWLF units except as follows:

*a.* Financial assurance in accordance with rule 567—113.14(455B) shall be required.

*b.* Owners or operators of MSWLF units described in this subrule that fail to complete cover installation within one year after October 1, 2007, will be subject to all the requirements of this chapter, unless otherwise specified.

*c.* Surface water sampling in accordance with subrule 113.10(3) shall be required.

*d.* MSWLF units subject to this rule shall perform groundwater sampling for the following parameters:

(1) Routine semiannual water sampling parameters:

1. Chloride.
2. Specific conductance (field measurement).
3. pH (field measurement).
4. Ammonia nitrogen.
5. Iron, dissolved.
6. Chemical oxygen demand.

7. Any additional parameters deemed necessary by the department.
- (2) Routine annual water sampling parameters:
  1. Total organic halogen.
  2. Phenols.
  3. Any additional parameters deemed necessary by the department.

*e.* If the analytical results for a downgradient groundwater monitoring point do not fall within the control limits of two standard deviations above (or below for pH) the mean parameters, listed in subparagraphs 113.2(5) “*d*”(1) and (2), in a corresponding upgradient groundwater monitoring point and it cannot be demonstrated that a source other than an MSWLF unit caused the control limit exceedence, then the owner or operator shall comply with the groundwater assessment monitoring program requirements in subrule 113.10(6) and corrective action requirements in subrules 113.10(7), 113.10(8) and 113.10(9), if necessary.

**113.2(6)** MSWLF units containing sewage sludge and failing to satisfy the requirements of this chapter violate Sections 309 and 405(e) of the Clean Water Act.

**113.2(7)** Consideration of other laws. The issuance of an MSWLF permit by the department in no way relieves the permit holder of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules and other applicable requirements.

**113.2(8)** Closure of existing MSWLF units. [See Objection at end of chapter]

*a.* Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2) “*a*,” pertaining to airports, in 113.6(2) “*b*,” pertaining to floodplains, or in 113.6(2) “*f*,” pertaining to unstable areas, must close in accordance with rule 567—113.12(455B) and conduct postclosure activities in accordance with rule 567—113.13(455B).

*b.* Existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

*c.* Rescinded IAB 12/31/08, effective 2/4/09.

*d.* Those portions of existing MSWLF units demonstrating placement of final cover in conformance with previously approved plans and specifications or regulations in effect at the time of such closure shall not be required to apply additional cover solely to achieve compliance with rule 567—113.12(455B).

**113.2(9)** Existing MSWLF units that continue accepting waste after October 1, 2007, shall submit an implementation plan to the department by January 31, 2008, that identifies how the MSWLF shall achieve compliance with these rules. The plan shall include a compliance schedule which shall not extend beyond January 31, 2011. This subrule shall not preclude compliance with subrule 113.2(8).

**113.2(10)** Compliance with amendments to these rules.

*a.* Owners or operators of existing MSWLF units that have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall not be required to redesign or reconstruct the MSWLF units due to amendments to these rules subsequent to such approval unless the department finds that such facilities are causing pollution or that continued use of such facilities results in a vertical expansion on top of or against the side slopes of a previously filled noncompliant MSWLF unit. Prior to waste placement in the vertical expansion area, revised design plans shall be submitted to include construction of a separatory liner and leachate collection system that comply with all the requirements of subrule 113.7(5) to be placed between the area of vertical expansion and the underlying noncompliant MSWLF unit. The department, in conjunction with the MSWLF owner or operator, shall determine the maximum amount of time necessary for continued waste placement on top of or against the previously filled noncompliant MSWLF unit to achieve an adequate slope in order to maintain drainage of leachate to the leachate collection system after expected settlement. [See Objection at end of chapter]

*b.* Except as authorized by subrule 113.2(9) and paragraph 113.2(10) “*a*,” if any new requirement conflicts with a provision of or an operating procedure prescribed in the engineering plans or the MSWLF permit, the facility shall conform to the new rule.

**113.2(11)** Equivalency review procedure.

a. In approving a permit application under this chapter, the department may authorize, in writing, alternatives to the design requirements in this chapter only if, and only to the extent that, specific rules in this chapter expressly state that alternatives may be authorized under this chapter.

b. An owner or operator requesting an alternative design under this chapter shall submit a request to the department prepared by an Iowa-licensed professional engineer. The request shall:

(1) Identify the specific rule for which an equivalency alternative is being sought.

(2) Demonstrate, through supporting technical documentation, justification and quality control procedures, that the requested alternative to the design requirements in the rules of this chapter will, for the life of operations at the facility, achieve the performance standards in that rule.

c. No equivalency alternative will be approved unless the application affirmatively demonstrates that the following conditions are met:

(1) The request is complete and accurate and the requirements of this subrule have been met.

(2) The proposed alternative will, for the life of operations at the facility, achieve the performance standards in the rule for which the alternative to the design requirements in that rule is sought.

(3) The proposed alternative will provide protection equivalent to the design requirements in this chapter for the air, water or other natural resources of the state of Iowa, and will not harm or endanger the public health, safety or welfare.

[Editorial change: IAC Supplement 2/25/09]

**567—113.3(455B) Definitions.** Unless otherwise noted, the definitions set forth in Iowa Code section 455B.301 and 567—Chapter 100, which are incorporated by reference; the definitions that appear in specific rules within this chapter; and the following definitions shall apply to this chapter: [See **Objection at end of chapter**]

“*Active life*” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with rule 567—113.12(455B).

“*Active portion*” means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with rule 567—113.12(455B).

“*Aquifer*” has the same meaning as in 567—Chapter 100.

“*Commercial solid waste*” means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

“*Existing MSWLF unit*” means any municipal solid waste landfill unit that has received solid waste as of the most recent permit renewal.

“*Facility*” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste. The facility is formally defined in the permit issued by the department. Buffer lands around a facility are not required to be included in the permitted boundary of a facility.

“*High water table*” has the same meaning as in 567—Chapter 100.

“*Household waste*” means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

“*Industrial solid waste*” means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. “Industrial solid waste” does not include mining waste or oil and gas waste.

“*Lateral expansion*” means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

“*Municipal solid waste landfill (MSWLF) unit*” means a discrete area of land or an excavation that receives household waste, and that is not a land application site, surface impoundment, injection well, or

waste pile, as those terms are defined under 40 CFR Part 257.2. An MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, construction and demolition debris, and industrial solid waste. An MSWLF unit may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not an MSWLF unit.

“*New MSWLF unit*” means any municipal solid waste landfill unit that has not received waste prior to the most recent permit renewal.

“*Open burning*” has the same meaning as in 567—Chapter 100.

“*Operator*” has the same meaning as in 567—Chapter 100.

“*Owner*” means the person(s) who owns a facility or part of a facility.

“*Point of compliance*” or “*POC*” means the point at which the MSWLF owner or operator demonstrates compliance with the liner performance standard, if applicable, and with the groundwater protection standard. The point of compliance is a vertical surface located hydraulically downgradient of the waste management area that extends down into the uppermost aquifer underlying the regulated MSWLF unit(s) and where groundwater monitoring shall be conducted.

“*Residential lead-based paint waste*” means waste containing lead-based paint that is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. “Residential lead-based paint waste” includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

“*Runoff*” means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

“*Run-on*” means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

“*Saturated zone*” means that part of the earth’s crust in which all voids are filled with water.

“*Sewage sludge*” has the same meaning as in 567—Chapter 67.

“*Sludge*” means any solid, semisolid, or liquid waste generated from a commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects exclusive of the treated effluent from a wastewater treatment plant.

“*Statistically significant increase*” or “*SSI*” means a statistical difference large enough to account for data variability and not thought to be due to chance alone.

“*Uppermost aquifer*” means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility’s property boundary.

“*Vertical expansion*” means additional waste placement on top of or against the side slopes of a previously filled MSWLF unit, whether active, closed, or inactive.

“*Waste management unit boundary*” means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

[Editorial change: IAC Supplement 2/25/09]

### **567—113.4(455B) Permits.**

**113.4(1) *Permit required.*** An MSWLF unit shall not be constructed or operated without a permit from the department.

**113.4(2) *Construction and operation.*** An MSWLF unit shall be constructed and operated according to this chapter, any plans and specifications approved by the department, and the conditions of the permit. Any approved plans and specifications shall constitute a condition of the permit.

**113.4(3) *Transfer of title and permit.*** If title to an MSWLF unit is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

*a.* The title transferee has applied in writing to the department to request a transfer of the permit within 30 days of the transfer of the title.

b. The permitted facility is in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

c. The transferee possesses the equipment and personnel to operate the project in conformance with Iowa Code chapter 455B and these rules and the terms of the permit.

**113.4(4) *Permit conditions.*** Any permit may be issued subject to conditions specified in writing by the department that are necessary to ensure that the facility is constructed and operated in a safe and effective manner, and in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

**113.4(5) *Effect of revocation.*** If an MSWLF permit held by any public or private agency is revoked by the department, then no new permit shall be issued to that agency for that MSWLF for a period of one year from the date of revocation. Such revocation shall not prohibit the issuance of a permit for the facility to another public or private agency.

**113.4(6) *Inspection of site and operation.*** The department shall be notified when the construction of a new facility or MSWLF unit or significant components thereof have been completed so that the department may inspect the facility to determine if the project has been constructed in accordance with the design approved by the department. The department shall inspect and approve a new facility or MSWLF unit before MSW may be accepted. The department shall inspect a facility and its operations on a regular basis to determine if the facility is in compliance with this chapter.

**113.4(7) *Duration and renewal of permits.***

a. *Operating permits.* An MSWLF permit shall be issued and may be renewed for a period no longer than five years, unless the MSWLF adopts research, development and demonstration (RD&D) provisions pursuant to subrule 113.4(10). An MSWLF permit with RD&D provisions pursuant to subrule 113.4(10) shall be issued and may be renewed for a period no longer than three years.

b. *Closure permits.* An MSWLF closure permit shall be issued only after a facility no longer accepts solid waste. A closure permit shall initially be issued for a period of 30 years. If the department extends the postclosure period beyond 30 years, then the duration of the subsequent closure permit will be determined on a site-specific basis. An MSWLF requires a closure permit until the department determines that postclosure operations are no longer necessary.

**113.4(8) *Request for permit renewal.***

a. *Operating permits.* A request for an operating permit renewal shall be in writing and filed at least 90 days before the expiration of the current permit. If the applicant is found not to be in compliance with this chapter or the permit requirements, then the applicant shall achieve compliance or be placed on a compliance schedule approved by the department before the permit may be renewed.

b. *Closure permits.* A request for a closure permit renewal or termination shall be filed at least 180 days before the expiration of the current permit. If the department finds that an MSWLF has completed all required postclosure activities and no longer presents a significant risk to human health or the environment, then the department shall issue written notification that a closure permit is no longer required for the facility.

**113.4(9) *Request for permit amendment.*** Requests for permit amendments must be submitted in writing to the department with supporting documentation and justification.

**113.4(10) *RD&D permits.*** The department may issue an RD&D permit that overrides the applicable portions of this chapter, as listed below, without issuing a variance. A permit amendment from the department for leachate recirculation only does not require an RD&D permit.

a. The department may issue an RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria, provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm (i.e., 12-inch) depth of leachate on the liner:

- (1) The run-on control systems in subrule 113.7(8); and
- (2) The liquids restrictions in subparagraph 113.8(1)“b”(3).

b. The department may issue a permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary

from the final cover criteria of subrules 113.12(1) and 113.12(2), provided that the MSWLF unit owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm (i.e., 12 inches).

c. Any permit issued under subrule 113.4(10) must include such terms and conditions at least as protective as the criteria for MSWLFs to ensure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph 113.4(10)“e”;

(2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the facility;

(4) Require the owner or operator of an MSWLF unit permitted under subrule 113.4(10) to submit an annual report to the department showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the department in the permit; and

(5) Require compliance with all criteria in this chapter, except as permitted under subrule 113.4(10).

d. The department may order an immediate termination of all operations at the facility allowed under subrule 113.4(10) or other corrective measures at any time the department determines that the overall goals of the project are not being attained, including protection of human health or the environment.

e. Any permit issued under subrule 113.4(10) shall not exceed 3 years, and each renewal of a permit may not exceed 3 years.

(1) The total term for a permit for a project including renewals may not exceed 12 years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and the status with respect to problem resolutions, and any other requirements that the department determines necessary for permit renewal.

**113.4(11) Factors in permit issuance decisions.** The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may consider compliance with related requirements, such as financial assurance and comprehensive planning. The department may review whether or not a good-faith effort to maintain compliance and protect human health and the environment is being made, and whether a compliance schedule is being followed.

**113.4(12) Notice and public participation in the MSWLF permit issuance and postpermit actions process.**

a. For the purposes of this subrule, “postpermit actions” includes permit renewals and requests for major facility modifications as defined below:

(1) Change in an MSWLF facility boundary or an MSWLF unit.

(2) Application for an RD&D permit pursuant to subrule 113.4(10).

(3) Installation of a landfill gas collection system.

(4) Application for a closure permit for a MSWLF unit.

(5) Transfer of an MSWLF permit to a new owner.

(6) Variance from this chapter under rule 567—113.15(455B).

(7) Change in the postclosure land use of the property.

(8) Other significant permit actions that are determined by the department to require public notice and participation. Such actions may include requests to change any of the requirements set forth as special provisions in the permit.

b. Prior to the issuance of approval or denial for an MSWLF permit or postpermit action, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of

the permit or postpermit action request. Procedures for the circulation of public notice shall include at least the following procedures:

(1) Upon receipt of the permit application or postpermit action request, the department shall make a determination of whether public notice is required in accordance with this subrule. If the determination is made that public notice is required, then the department shall prepare the public notice which shall be circulated by the owner or operator within the service area of the MSWLF by posting the public notice near the entrance to the MSWLF; and by publishing the public notice in periodicals or, if appropriate, in a newspaper(s) of general circulation.

(2) The public notice shall be mailed by the department to any person upon request and posted on the department's Web site.

*c.* The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views with respect to the MSWLF permit application or postpermit action request. All written comments submitted during the 30-day comment period shall be retained by the department and considered by the department in the formulation of the department's final determinations with respect to the permit application or postpermit action request. The period for comment may be extended at the discretion of the department.

*d.* The contents of the public notice shall include at least the following:

(1) The name, address, and telephone number of the department.  
(2) The name and address of each applicant.  
(3) A brief description of each applicant's activities or operations which result in the submittal of the permit application or postpermit action request.

(4) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit or postpermit action request. A statement of procedures to request a public hearing pursuant to paragraph 113.4(12) "e" shall be included.

(5) Locations where copies of the permit application or postpermit action request may be reviewed, including the closest department field office, and the times at which the copies shall be available for public inspection.

*e.* The applicant, any interested agency, person or group of persons may request or petition for a public hearing with respect to an MSWLF permit application or postpermit action request. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the department within the 30-day period prescribed in paragraph 113.4(12) "c" and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the department. Instances of doubt should be resolved in favor of holding the hearing. Any hearing requested pursuant to this subrule shall be held in the service area of the MSWLF, or other appropriate area at the discretion of the department.

*f.* If the department determines that a public hearing is warranted, then the department shall prepare the public notice of the hearing. Public notice of any hearing held shall be circulated at least as widely as was the notice of the permit application or postpermit action request.

*g.* The contents of public notice of any hearing held pursuant to paragraph 113.4(12) "e" shall include at least the following:

(1) The name, address, and telephone number of the department;  
(2) The name and address of each applicant whose application will be considered at the hearing;  
(3) A brief reference to the public notice issued for each permit application and postpermit action request;

(4) Information regarding the time and location for the hearing;

(5) The purpose of the hearing;

(6) A concise statement of the issues raised by the person requesting the hearing;

(7) Locations where copies of the permit application or postpermit action may be reviewed, including the closest department field office, and the times at which the copies shall be available for public inspection; and

(8) A brief description of the nature of the hearing, including the rules and procedures to be followed.

*h.* The department shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the department's responses shall be made available to the public.

**567—113.5(455B) Permit application requirements.**

**113.5(1)** Unless otherwise authorized by the department, an MSWLF permit applicant shall submit, at a minimum, the following permit application information to the department:

- a.* The name, address and telephone number of:
- (1) Owner of the site where the facility will be located.
  - (2) Permit applicant.
  - (3) Official responsible for the facility.
  - (4) Certified operator (i.e., "operator") responsible for operation of the facility.
  - (5) Professional engineer(s) (P.E.) licensed in the state of Iowa and retained for the design of the facility.
  - (6) Agency to be served by the facility, if any.
  - (7) Responsible official of agency to be served, if any.
- b.* An organizational chart.
- c.* A site exploration and characterization report for the facility that complies with the requirements of subrule 113.6(4).
- d.* Plans and specifications for the facility, and quality control and assurance (QC&A) plans, that comply with the requirements of subrule 113.7(6).
- e.* A development and operations (DOPs) plan for the facility, an emergency response and remedial action plan (ERRAP), and proof of MSWLF operator certification that comply with the requirements of rule 567—113.8(455B).
- f.* An environmental monitoring plan that complies with the requirements of rules 567—113.9(455B) and 567—113.10(455B).
- g.* The project goals and time lines, and other documentation as necessary to comply with subrule 113.4(10) and other requirements of the department if an RD&D permit is being requested or renewed.
- h.* Proof of financial assurance in compliance with rule 567—113.14(455B).
- i.* A closure and postclosure plan that complies with the requirements of rules 567—113.12(455B) and 567—113.13(455B).

**113.5(2)** Incomplete permit applications. If the department finds the permit application information to be incomplete, the department shall notify the applicant of that fact and of the specific deficiencies. If the applicant fails to correct the noted deficiencies within 30 days, the department may reject the application and return the application materials to the applicant. The applicant may reapply without prejudice.

**567—113.6(455B) Siting and location requirements for MSWLFs.** This rule applies to new MSWLF units and horizontal expansions of existing MSWLF units. Except for paragraphs 113.6(2) "a," 113.6(2) "b" and 113.6(2) "f," this rule does not apply to permitted MSWLF units which have been approved prior to October 1, 2007. Information required to document compliance with the requirements of rule 567—113.6(455B) shall be consolidated and maintained in a site exploration and characterization report pursuant to subrule 113.6(4).

**113.6(1)** *Local siting approval.* The department will not consider a permit application for a new MSWLF unless local siting approval pursuant to Iowa Code section 455B.305A, if applicable, has been obtained.

**113.6(2)** *Location restrictions.* All MSWLFs shall comply with the following location restrictions.

- a. Airports.* For purposes of this chapter:

“*Airport*” means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

“*Bird hazard*” means an increase in the likelihood of bird-aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(1) A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 U.S.C. 44718 note). Section 503 prohibits the “construction or establishment” of new MSWLFs after April 5, 2000, within six miles of certain smaller public airports. The Federal Aviation Administration (FAA) administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34A, dated January 26, 2006.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by piston-type aircraft only must demonstrate to the FAA that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft. The owner or operator must place the demonstration of this requirement in the operating record and submit to the department a copy of the demonstration approved by the FAA.

(3) Owners or operators proposing to site new MSWLF units and lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the FAA. A copy of these notifications shall be submitted to the department.

*b. Floodplains.* For purposes of this chapter:

“*Floodplain*” means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands that may be inundated by a 100-year flood.

“*100-year flood*” means a flood that has a 1 percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

“*Washout*” means the carrying away of solid waste by waters of the base flood.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate to the department that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

*c. Wetlands.* For purposes of this chapter:

“*Wetlands*” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the department:

(1) Where applicable under Section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

1. Cause or contribute to violations of any applicable state water quality standard;

2. Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973; and

4. Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

1. Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;
2. Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;
3. The volume and chemical nature of the waste managed in the MSWLF unit;
4. Impacts on fish, wildlife, and other aquatic resources and their habitats from release of the solid waste;
5. The potential effects of catastrophic release of waste to wetlands and the resulting impacts on the environment; and
6. Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under Section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subparagraph 113.6(2)“c”(1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of human-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

*d. Fault areas.* For the purposes of this chapter:

“*Fault*” means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

“*Displacement*” means the relative movement of any two sides of a fault measured in any direction.

“*Holocene*” means the most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

*e. Seismic impact zones.* For the purposes of this chapter:

“*Seismic impact zone*” means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth’s gravitational pull (g), will exceed 0.10g in 250 years.

“*Maximum horizontal acceleration in lithified earth material*” means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

“*Lithified earth material*” means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. “Lithified earth material” does not include human-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth’s surface.

New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

*f. Unstable areas.* For purposes of this chapter:

“*Unstable area*” means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

“*Structural components*” means liners, leachate collection systems, final covers, run-on systems, runoff systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

“*Poor foundation conditions*” means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

“*Areas susceptible to mass movement*” means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

“*Karst terranes*” means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate to the department that engineering measures have been incorporated into the MSWLF unit’s design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

- (1) On-site or local soil conditions that may result in significant differential settling;
- (2) On-site or local geologic or geomorphologic features; and
- (3) On-site or local human-made features or human-induced events (both surface and subsurface).

*g. Threatened or endangered flora and fauna.*

(1) All MSWLF owners or operators shall contact the department’s Iowa Natural Areas Inventory with a request to search its records to determine the presence of, or habitat for, any threatened or endangered species or communities of flora or fauna on the proposed site. In the event that the department’s Iowa Natural Areas Inventory does not contain records of threatened or endangered species or communities but their presence is suspected, then the permit applicant shall conduct a site survey.

(2) Should any threatened or endangered species be identified pursuant to subparagraph 113.6(2)“g”(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of the threatened or endangered species or communities.

*h. Cultural resources.*

(1) All MSWLF owners and operators shall prepare a comprehensive listing of, and assessment of the impact on, any archaeologically, historically, or architecturally significant properties on the proposed site. To assess the impact, the permit applicant shall consult with the historic preservation bureau of the state historical society of Iowa.

(2) Should any significant cultural resources be identified pursuant to subparagraph 113.6(2)“h”(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of those cultural resources.

*i. Separation from groundwater.* The base of an MSWLF unit shall be situated so that the base of the waste within the proposed unit is at least 5 feet above the high water table unless a greater separation is required to ensure that there will be no significant adverse effect on groundwater or surface waters or a lesser separation is unlikely to have a significant adverse effect on groundwater or surface waters.

Artificial means of lowering the high water table are acceptable. The separation of the base of an MSWLF unit from the high water table shall be measured and maintained in a manner acceptable to the department.

*j. Wells and community water systems.* An MSWLF unit shall not be within 1,000 feet of any potable well or community water system in existence at the time of receipt of the original permit application or application to laterally expand the permitted MSWLF unit for the facility that is being used for human or livestock consumption. Groundwater monitoring wells are exempt from this requirement. The department may also exempt extraction wells utilized as part of a remediation system from this requirement. A new MSWLF unit shall not be within 1,000 feet of a downgradient agricultural drainage well.

*k. Property line setback.* An MSWLF unit shall be at least 50 feet from the adjacent property line.

*l. Housing and sensitive populations.* An MSWLF unit shall not be within 500 feet of an occupied residence, recreational area, child care facility, educational facility, or health care facility in existence at the time of receipt of the original permit application or application to laterally expand the permitted MSWLF unit, unless there is a written agreement between the MSWLF owner and such facility. The written agreement shall be filed with the county recorder for abstract of title purposes, and a copy submitted to the department.

**113.6(3) Soil and hydrogeologic investigations.** An MSWLF shall have a qualified groundwater scientist, as defined in paragraph 113.10(1)“d,” to conduct a soil and hydrogeologic investigation in accordance with this subrule. The purpose of this investigation is to obtain data to determine potential routes of contaminant migration via groundwater. Such information is vital for completion of the site exploration and characterization report, and the hydrologic monitoring system plan and design. This subrule sets forth the minimum requirements for soil and hydrogeologic investigations. The MSWLF shall comply with this subrule unless the department issues written approval due to specific site conditions.

*a. Number of borings.* A sufficient number of borings shall be made to accurately identify the stratigraphic and hydrogeologic conditions at the site.

*b. Depth of borings.* Unless otherwise approved by the department in writing, the following requirements shall apply to the depth of borings.

(1) All borings shall be a minimum of 25 feet deep and at least 10 feet below the water table.

(2) At a minimum, half of all borings shall extend 20 feet into the uppermost aquifer, 50 feet below the water table, or 10 feet into bedrock.

(3) At a minimum, one boring shall extend 10 feet into bedrock or 100 feet below the lowest ground surface elevation.

(4) All borings shall be of sufficient depth to correlate strata between borings.

*c. Boring method and soil samples.*

(1) Continuous samples shall be collected for all borings, unless otherwise approved by the department in writing.

(2) Boring logs shall be as detailed as possible in describing each stratum.

(3) Samples shall be clearly marked, preserved and transported in accordance with laboratory procedures.

(4) The permit applicant shall keep and preserve samples until at least 30 days after the permit is issued.

(5) Soil samples from each stratum shall be tested for falling-head permeability and grain size distribution.

*d. Conversion of or plugging borings.*

(1) Borings may be converted to piezometers or monitoring wells. However, the conversion of such borings does not guarantee that more piezometers or monitoring wells will not be required in the department-approved hydrologic monitoring system plan and design.

(2) Borings not converted to piezometers or monitoring wells shall be plugged and properly sealed so as not to create pathways for subsurface or surface pollution migration. Borings converted to piezometers or monitoring wells may still need to be partially plugged depending on the depth of the boring. Plugging shall be performed pursuant to paragraph 113.10(2)“d.”

*e. Soil and hydrogeologic investigation description and analysis.* A soil and hydrogeologic investigation description and analysis shall be completed and maintained and, at a minimum, shall contain the following:

- (1) The boring logs pursuant to subparagraph 113.6(3)“c”(2).
- (2) A description of the properties of each soil and bedrock stratum as appropriate, including:
  1. Soil texture and classification.
  2. Particle size distribution.
  3. Mineral composition, cementation, and soil structure.
  4. Permeability, including horizontal and vertical permeability, and porosity.
  5. Geologic structure, including strike, dip, folding, faulting and jointing.
  6. Previous activities and infrastructure at the site that could affect geology and hydrogeology, such as but not limited to mining, quarry operations, borrow pits, waste disposal, storage tanks, pipelines, utilities and tile lines.
  7. Lenses and other discontinuous units, voids, solution openings, layering, fractures, other heterogeneity, and the scale or frequency of the heterogeneity.
  8. Correlation and continuity of strata between borings.
- (3) Descriptions of the hydrogeologic units within the saturated zone, including:
  1. Thickness.
  2. Hydraulic properties, including as appropriate, conductivity, transmissivity, storativity, and effective porosity.
  3. Concentrations of chemical constituents listed in Appendix I present in the groundwater of hydrogeologic units and the source of those constituents, if known.
  4. Role and effect of each hydrogeologic unit as an aquifer, aquitard, or perched saturated zone.
  5. The actual or potential use of the aquifers as water supplies.
- (4) Plan view maps, and a series of cross sections with two oriented perpendicular and two oriented parallel to the predominant directions of groundwater flow through the MSWLF unit, showing:
  1. The extent of soil and bedrock strata.
  2. The position of the water table.
  3. The position of the uppermost aquifer.
  4. Measured values of hydraulic head.
  5. Equipotential lines and inferred groundwater streamlines of the water table, and the uppermost aquifer if different from the water table.
  6. Location of soil and bedrock borings.
  7. Location of piezometers and monitoring points, if any.
- (5) A description and evaluation of horizontal and vertical groundwater flow which specifically addresses the following and their significance to the movement of pollutants carried by groundwater:
  1. Local, intermediate and regional groundwater systems.
  2. Groundwater recharge and discharge areas within and immediately surrounding the facility, including interactions with perennial and intermittent surface waters and how the facility affects recharge rates.
  3. Existing and proposed groundwater and surface water withdrawals.
  4. The effects of heterogeneity, fractures or directional differences in permeability on groundwater movement.
  5. Directions of groundwater movement, including vertical components of flow, specific discharge rates and average linear velocities within the hydrologic strata.
  6. Seasonal or other temporal fluctuations in hydraulic head.
  7. The effect of existing and proposed MSWLF units.
- (6) An analysis of potential impacts on groundwater and surface water quality, and water users, in the event of a theoretical release at the most downgradient portion of each MSWLF unit. The analysis shall at a minimum utilize contaminants and indicator parameters with high mobility in groundwater (e.g., chlorides, organic solvents). This analysis shall include:
  1. Assumptions and approximations utilized, and why they were utilized.

2. If a model is utilized, a thorough description of models used and each model's capabilities and limitations, including the reliability and accuracy of the models in actual field tests.

3. Projected paths and rates of movement of contaminants found in leachate.

(7) Recommendations for the location of the proposed MSWLF unit and conceptual design based on hydrogeologic information.

**113.6(4) *Site exploration and characterization report.*** An MSWLF shall maintain a site exploration and characterization report. At a minimum, the site exploration and characterization report shall detail compliance with the requirements of rule 567—113.6(455B) and shall contain the following components.

a. A title page and index.

b. A legal description of the site.

c. Proof of the applicant's ownership of the site and legal entitlement to use the site as an MSWLF.

If the applicant does not own the site, then proof of legal entitlement to the site, such as, for example, a lease, must be submitted. Such legal entitlement must include the following:

(1) Provisions that allow continued disposal operations until closure of the facility.

(2) Provisions for the performance of facility closure operations.

(3) Provisions for postclosure care for at least a 30-year period after facility closure.

d. Proof of the applicant's local siting approval pursuant to Iowa Code section 455B.305A, if applicable.

e. Scaled maps or aerial photographs locating the boundaries of the facility and identifying:

(1) North and other principal compass points.

(2) Section lines and other legal boundaries.

(3) Zoning and land use within 0.5 miles.

(4) Haul routes to and from the facility, including load limits or other restrictions on those routes.

(5) Topography within 0.5 miles.

(6) Applicable setback distances and location requirements pursuant to rule 567—113.6(455B),

including:

1. Airports within 6 miles of existing, new and planned MSWLF units.

2. Floodplains within or adjacent to the facility.

3. Wetlands within or adjacent to the facility.

4. Fault areas within 200 feet of existing, new and planned MSWLF units.

5. Seismic impact zones within or adjacent to the facility.

6. Unstable areas within or adjacent to the facility.

7. Location of threatened or endangered species within or adjacent to the facility.

8. Location of cultural resources within or adjacent to the facility.

9. Wells within 1,000 feet of upgradient existing, new and planned MSWLF units.

10. Community water systems within 1 mile of upgradient existing, new and planned MSWLF units.

11. Boundaries of the existing, new and planned MSWLF units and the facility property line.

12. Housing and sensitive populations within 500 feet of existing, new and planned MSWLF units.

f. The bird-aircraft hazard demonstration pursuant to paragraph 113.6(2) "a," if applicable.

g. The floodplain demonstration pursuant to paragraph 113.6(2) "b," if applicable.

h. The wetlands demonstration pursuant to paragraph 113.6(2) "c," if applicable.

i. The fault area demonstration pursuant to paragraph 113.6(2) "d," if applicable.

j. The seismic impact zone demonstration pursuant to paragraph 113.6(2) "e," if applicable.

k. The unstable area demonstration pursuant to paragraph 113.6(2) "f," if applicable.

l. The threatened or endangered flora and fauna demonstration pursuant to paragraph 113.6(2) "g," if applicable.

m. The cultural resources demonstration pursuant to paragraph 113.6(2) "h," if applicable.

n. Copies of written agreements with surrounding property owners pursuant to paragraph 113.6(2) "i," if applicable.

o. The soil and hydrogeologic investigation description and analysis pursuant to paragraph 113.6(3) "e."

**567—113.7(455B) MSWLF unit design and construction standards.** All MSWLF units shall be designed and constructed in accordance with this rule.

**113.7(1) *Pre-design meeting with the department.*** A potential applicant for a new MSWLF unit may schedule a pre-design meeting with the department's landfill permitting staff prior to beginning work on the plans and specifications of a modified or new MSWLF. The purpose of this meeting is to help minimize the need for revisions upon submittal of the official designs and specifications.

**113.7(2) *Plans and specifications.***

*a.* Unless otherwise requested by the department, one copy of plans, specifications and supporting documents shall be sent to the department for review. Upon written department approval, the documents shall be submitted in triplicate to the department for proper distribution.

*b.* All new MSWLF units shall be constructed in compliance with the rules and regulations in effect at the time of construction. Previous department approval of plans and specifications for MSWLF units not yet constructed shall be superseded by the promulgation of new rules and regulations, after which plans and specifications shall be resubmitted to the department for approval prior to construction and operation.

**113.7(3) *General site design and construction requirements.*** An MSWLF shall have the following:

- a.* All-weather access roads to the facility.
- b.* A perimeter fence with a lockable gate(s) to help prevent unauthorized access.
- c.* A sign at the entrance to the facility specifying:
  - (1) Name and permit number of the facility.
  - (2) Days and hours that the facility is open to the public or a statement that the facility is not open to the public.
  - (3) A general list of materials that are not accepted.
  - (4) Telephone number of the official responsible for operation of the facility and the emergency contact person(s).
- d.* All-weather access roads within the facility.
- e.* Signs or pavement markings clearly indicating safe and proper on-site traffic patterns.
- f.* Adequate queuing distance for vehicles entering and exiting the property.
- g.* A scale certified by the Iowa department of agriculture and land stewardship.

**113.7(4) *MSWLF unit subgrade.*** The subgrade for a new MSWLF unit shall be constructed as follows:

*a.* All trees, stumps, roots, boulders, debris, and other material capable of deteriorating in situ material strength or of creating a preferential pathway for contaminants shall be completely removed or sealed off prior to construction of the MSWLF unit.

*b.* The material beneath the MSWLF unit shall have sufficient strength to support the weight of the unit during all phases of construction and operation. The loads and loading rate shall not cause or contribute to failure of the liner and leachate collection system.

*c.* The total settlement or swell of the MSWLF unit's subgrade shall not cause or contribute to failure of the liner and leachate collection system.

*d.* If the in situ material of the MSWLF unit's subgrade cannot meet the requirements of paragraphs 113.7(4) "b" and 113.7(4) "c," then such material shall be removed and replaced with material capable of compliance.

*e.* The subgrade of an MSWLF unit shall be constructed and graded to provide a smooth working surface on which to construct the liner.

*f.* The subgrade of an MSWLF unit shall not be constructed in or with frozen soil.

**113.7(5) *MSWLF unit liners and leachate collection systems.*** The liner and leachate collection system for a new MSWLF unit shall be constructed in accordance with the requirements of this subrule. All active portions must have a composite liner or an alternative liner approved by the department. An MSWLF unit must have a functioning leachate collection system during its active life.

*a. *Liner systems.** An MSWLF unit shall have a liner system that complies with either the composite liner requirements of subparagraph 113.7(5) "a"(1) or an alternative liner system that

complies with the requirements of subparagraph 113.7(5)“a”(2). Liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches after compaction.

(1) Composite liner systems.

1. A composite liner consists of two components, an upper flexible membrane liner (FML) and a lower compacted soil liner.

2. The upper component must consist of a minimum 30-mil flexible membrane liner (FML). FML components consisting of high-density polyethylene (HDPE) shall be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the lower compacted soil component.

3. The lower component must consist of at least a 2-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second (cm/sec). The compacted soil must be placed in lifts no thicker than 8 inches after compaction.

4. The composite liner must be adequately sloped toward the leachate collection pipes to provide drainage of leachate. Unless alternative design requirements to this performance standard are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate collection system shall have a slope greater than or equal to 2 percent and not exceeding 33 percent.

(2) Alternative liner systems.

1. The design must ensure that the concentration values listed in Table I of rule 567—113.7(455B) will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified pursuant to numbered paragraph 113.7(5)“a”(2)“2.” Alternative liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches.

2. The relevant point of compliance specified by the department must be within 50 feet of the planned liner or waste boundary, unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored in accordance with subparagraph 113.10(2)“a”(2), and located on land owned by the owner of the MSWLF unit. The relevant point of compliance specified by the department shall be at least 50 feet from the property line of the facility.

3. When approving an alternative liner design, the department shall consider at least the following factors:

- The hydrogeologic characteristics of the facility and surrounding land.
- The climatic factors of the area.
- The volume and physical and chemical characteristics of the leachate.
- The sensitivities and limitations of the modeling demonstrating the applicable point of compliance.
- Practicable capability of the owner or operator.

4. The alternative liner must be adequately sloped toward the leachate collection pipes to provide drainage of leachate. Unless alternative design requirements to this performance standard are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate collection system shall have a slope greater than or equal to 2 percent and not exceeding 33 percent.

Table I

Chemical	MCL (mg/l)
Arsenic . . . . .	0.01
Barium . . . . .	1.0
Benzene . . . . .	0.005
Cadmium . . . . .	0.01
Carbon tetrachloride . . . . .	0.005
Chromium (hexavalent) . . . . .	0.05
2,4-Dichlorophenoxy acetic acid . . . . .	0.1
1,4-Dichlorobenzene . . . . .	0.075
1,2-Dichloroethane . . . . .	0.005
1,1-Dichloroethylene . . . . .	0.007

Endrin .....	0.0002
Fluoride .....	4.0
Lindane .....	0.004
Lead .....	0.05
Mercury .....	0.002
Methoxychlor .....	0.1
Nitrate .....	10.0
Selenium .....	0.01
Silver .....	0.05
Toxaphene .....	0.005
1,1,1-Trichloromethane .....	0.2
Trichloroethylene .....	0.005
2,4,5-Trichlorophenoxy acetic acid .....	0.01
Vinyl chloride .....	0.002

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*b. Leachate collection system.* All MSWLF units shall have a leachate collection system that complies with the following requirements:

(1) The leachate collection system shall be designed and constructed to function for the entire active life of the facility and the postclosure period.

(2) The leachate collection system shall be of a structural strength capable of supporting waste and equipment loads throughout the active life of the facility and the postclosure period.

(3) The leachate collection system shall be designed and constructed to minimize leachate head over the liner at all times. An MSWLF unit shall have a leachate collection system that maintains less than a 30-centimeter (i.e., 12-inch) depth of leachate over the liner. The leachate collection system shall have a method for accurately measuring the leachate head on the liner at the system's lowest point(s) within the MSWLF unit (e.g., sumps). Furthermore, an additional measuring device shall be installed to measure leachate directly on the liner in the least conductive drainage material outside of the sump and collection trench. Leachate head measurements from cleanout lines or manholes are not acceptable for the second measurement. All such measurement devices shall be in place before waste is placed in the MSWLF unit.

(4) If the leachate collection system is not designed and constructed factoring in leachate recirculation or bioreactor operations, the department may prohibit such activities within the MSWLF unit.

(5) The collection pipes shall be of a length and cross-sectional area that allow for cleaning and inspection through the entire length of all collection pipes at least once every three years. The collection pipes shall not be designed or constructed with sharp bends that prevent cleaning or inspection along any section of the collection pipe or that may cause the collection pipe to be damaged during cleaning or inspection.

(6) Leachate collection system designs shall attempt to minimize the potential for clogging due to mass loading.

(7) Unless alternative design requirements are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the following design requirements shall apply:

1. A geotextile cushion over the flexible membrane liner (FML), if the liner utilizes an FML and granular drainage media. A geotextile cushion is not required if the granular drainage media is well rounded and less than 3/8 inch in diameter. The geotextile's mass shall be determined based on the allowable pressure on the geomembrane.

2. Collection pipe(s) at least 4 inches in diameter at the base of the liner slope(s), surrounded by the high hydraulic-conductivity material listed in numbered paragraph 113.7(5) "b"(7)"3" below. The collection pipe shall have slots or holes large enough to minimize the potential for clogging from fines conveyed by incoming leachate.

3. One of the following high hydraulic-conductivity materials:

- High hydraulic-conductivity material (e.g., gravel) of uniform size and a fines content of no more than 5 percent by weight passing a #200 sieve. The high hydraulic-conductivity material shall be at least 12 inches in depth and have a hydraulic conductivity of at least  $1 \times 10^{-2}$  cm/sec; or
- A geosynthetic drainage media (e.g., geonet). The transmissivity of geonets shall be tested with method ASTM D4716, or an equivalent test method, to demonstrate that the design transmissivity will be maintained for the design period of the facility. The testing for the geonet in the liner system shall be conducted using actual boundary material intended for the geonet at the maximum design normal load for the MSWLF unit, and at the design load expected from one lift of waste. At the maximum design normal load, testing shall be conducted for a minimum period of 100 hours unless data equivalent of the 100-hour period is provided, in which case the test shall be conducted for a minimum period of one hour. In the case of the design load from one lift of waste, the minimum period shall be one hour. For geonets used in final covers, only one test shall be conducted for a minimum period of one hour using the expected maximum design normal load from the cover soils and the actual boundary materials intended for the geonet. A granular layer at least 12 inches thick with a hydraulic conductivity of at least  $1 \times 10^{-3}$  cm/sec shall be placed above the geosynthetic drainage material that readily transmits leachate and provides separation between the waste and liner.

(8) Manholes within the MSWLF unit shall be designed to minimize the potential for stressing or penetrating the liner due to friction on the manhole exterior from waste settlement.

(9) The leachate drainage and collection system within the MSWLF unit shall not be used for the purpose of storing leachate. If leachate is to be stored, it shall be stored in designated storage structures outside of the MSWLF unit.

(10) All of the facility's leachate storage and management structures outside of the MSWLF unit (e.g., tanks, holding ponds, pipes, sumps, manholes, lift stations) and operations shall have containment structures or countermeasures adequate to prevent seepage to groundwater or surface water. The containment structures and countermeasures for leachate storage shall be at least as protective of groundwater at the liner of the MSWLF unit on a performance basis.

(11) Unless alternative design requirements are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate storage structures shall be able to store at least 7 days of accumulated leachate at the maximum generation rate used in designing the leachate collection system. Such minimum storage capacity may be constructed in phases over time so long as the 7-day accumulation capacity is maintained. The storage facility shall also have the ability to load tanker trucks in case sanitary sewer service is unavailable for longer than 7 days.

(12) The leachate collection system shall be equipped with valves or devices similar in effectiveness so that leachate can be controlled during maintenance.

(13) The leachate collection system shall be accessible for maintenance at all times and under all weather conditions.

(14) The permit holder shall annually submit a Leachate Control System Performance Evaluation (LCSPE) Report as a supplement to the facility Annual Water Quality Report, as defined in subrule 113.10(10). The report shall include an evaluation of the effectiveness of the system in controlling the leachate, leachate head levels and elevations, the volume of leachate collected and transported to the treatment works or discharged under any NPDES permits, records of leachate contaminants testing required by the treatment works, proposed additional leachate control measures, and an implementation schedule in the event that the constructed system is not performing effectively.

**113.7(6) *Quality control and assurance programs.*** All MSWLF units shall be constructed under the supervision of a strict quality control and assurance (QC&A) program to ensure that MSWLF units are constructed in accordance with the requirements of rule 567—113.7(455B) and the approved plans and specifications. At a minimum, such a QC&A program shall consist of the following.

*a.* The owner or operator shall designate a quality control and assurance (QC&A) officer. The QC&A officer shall be a professional engineer (P.E.) registered in Iowa. The QC&A officer shall not be an employee of the facility, the construction company or construction contractor. The owner or operator shall notify the department of the designated QC&A officer and provide the department with that person's

contact information. The QC&A officer may delegate another person or persons who are not employees of the facility to supervise or implement an aspect of the QC&A program.

b. The QC&A officer shall document compliance with rule 567—113.7(455B), and the approved plans and specifications, for the following aspects of construction:

(1) The MSWLF unit's subgrade.

(2) The liner system, as applicable, below:

1. The flexible membrane liner (FML). Destructive testing of the FML shall be kept to side slopes when continuous seams are utilized. Patches over FML destructive testing areas shall be checked with nondestructive methods.

2. The compacted clay component of the liner system. A minimum of five field moisture density tests per 8-inch lift per acre shall be performed to verify that the correct density, as correlated to permeability by a laboratory analysis, has been achieved. Laboratory hydraulic conductivity testing of Shelby tube samples from the constructed soil liner or test pad, or field hydraulic conductivity testing of the constructed soil liner or test pad, or other methods approved by the department, shall be utilized as a QC&A test.

(3) The leachate collection, conveyance and storage systems.

(4) Any other aspect of construction as required by the department.

c. A sampling and testing program shall be implemented by the QC&A officer as part of the QC&A program. The sampling and testing program shall:

(1) Verify full compliance with the requirements of rule 567—113.7(455B), and the approved plans and specifications.

(2) Be approved by the department prior to construction of the MSWLF unit.

(3) Detail how each stage of construction will be verified for full compliance with the requirements of rule 567—113.7(455B), and the approved plans and specifications.

(4) Be based on statistically significant sampling techniques and establish criteria for the acceptance or rejection of materials and constructed components of the MSWLF unit.

(5) Detail what actions will take place to remedy and verify any material or constructed component that is not in compliance with the requirements of rule 567—113.7(455B), and the approved plans and specifications.

d. The QC&A officer shall document the QC&A program. Upon completion of the MSWLF unit construction, the QC&A officer shall submit a final report to the department that verifies compliance with the requirements of rule 567—113.7(455B), and the approved plans and specifications. A copy of the final report shall also be maintained by the facility in the operating record. At a minimum, the final report shall include the following.

(1) A title page and index.

(2) The name and permit number of the facility.

(3) Contact information for the QC&A officer and persons delegated by the QC&A officer to supervise or implement an aspect of the QC&A program.

(4) Contact information for all construction contractors.

(5) Copies of daily reports containing the following information.

1. The date.

2. Summary of weather conditions.

3. Summary of locations on the facility where construction was occurring.

4. Summary of equipment, materials and personnel utilized in construction.

5. Summary of meetings held regarding the construction of the MSWLF unit.

6. Summary of construction progress.

7. Photographs of the construction progress, with descriptions of the time, subject matter and location of each photograph.

8. Details of sampling and testing program for that day. At a minimum, this report shall include details of where sampling and testing occurred, the methods utilized, personnel involved and test results.

9. Details of how any material or constructed component that was found not to be in compliance via the sampling and testing program was remedied.

(6) A copy of detailed as-built drawings with supporting documentation and photographic evidence. This copy shall also include a narrative explanation of changes from the original department-approved plans and specifications.

(7) A signed and sealed statement by the QC&A officer that the MSWLF unit was constructed in accordance with the requirements of rule 567—113.7(455B), and the approved plans and specifications.

**113.7(7) Vertical and horizontal expansions of MSWLF units.** All vertical and horizontal expansions of disposal airspace over existing and new MSWLF units shall comply with the following requirements.

*a.* Horizontal expansions shall, at a minimum, comply with the following requirements:

(1) Horizontal expansions are new MSWLF units and, at a minimum, shall be designed and constructed in accordance with subrules 113.7(4), 113.7(5) and 113.7(6).

(2) The slope stability of the horizontal expansion between the existing unit and new MSWLF unit shall be analyzed. The interface between two MSWLF units shall not cause a slope failure of either of the MSWLF units.

(3) A horizontal expansion may include a vertical elevation increase of an existing MSWLF unit, pursuant to paragraph 113.7(7) “*b.*,” if approved by the department.

*b.* Vertical expansions shall, at a minimum, comply with the following requirements:

(1) A vertical expansion of an MSWLF unit shall not be allowed if the MSWLF unit does not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance.

(2) An analysis of the structural impacts of the proposed vertical expansion on the liner and leachate collection system shall be completed. The vertical expansion shall not contribute to the structural failure of the liner and leachate collection system.

(3) An analysis of the impact of the proposed vertical expansion on leachate generation shall be completed. The vertical expansion shall not overload the leachate collection system or contribute to excess head on the liner.

(4) An analysis of the effect of the proposed vertical expansion on run-on, runoff and discharges into waters of the state shall be completed. The vertical expansion shall not cause a violation of subrule 113.7(8).

(5) The proposed vertical expansion shall be in compliance with the final slopes required at closure pursuant to paragraph 113.12(1) “*e.*”

(6) An analysis of the potential impact of the proposed vertical expansion on litter generation shall be completed. Landfill management strategies may need to be amended to help prevent increased litter.

(7) An analysis of the impact of the proposed vertical expansion on lines-of-sight and any visual buffering utilized by the landfill shall be completed.

**113.7(8) Run-on and runoff control systems.**

*a.* Owners or operators of all MSWLF units must design, construct, and maintain the following:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

*b.* Runoff from the active portion of the MSWLF unit must be handled in accordance with paragraph 113.10(1) “*a.*”

**567—113.8(455B) Operating requirements.** The requirements of this rule shall be consolidated in a development and operations plan (DOPs) pursuant to subrule 113.8(4) and the emergency response and remedial action plan (ERRAP) pursuant to subrule 113.8(5), as applicable.

**113.8(1) Prohibited operations and activities.** For the purposes of this subrule, “regulated hazardous waste” means a solid waste that is a hazardous waste, as defined in Iowa Code section 455B.411.

*a. Waste screening for prohibited materials.* Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes, polychlorinated biphenyls (PCB) wastes and other prohibited wastes listed in paragraph 113.8(1) “*b.*” This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes, PCB wastes or other prohibited wastes listed in paragraph 113.8(1)“b”;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous wastes, PCB wastes and other prohibited wastes listed in paragraph 113.8(1)“b”; and

(4) Notification of the EPA regional administrator if regulated hazardous wastes or PCB wastes are discovered at the facility.

*b. Materials prohibited from disposal.* The following wastes shall not be accepted for disposal by an MSWLF. Some wastes may be banned from disposal via the multiple categories listed below.

(1) Hazardous waste, whether it is a chemical compound specifically listed by EPA as a regulated hazardous waste or a characteristic hazardous waste pursuant to the characteristics below:

1. Ignitable in that the waste has a flash point (i.e., it will ignite) at a temperature of less than 140 degrees Fahrenheit.

2. Corrosive in that the waste has a pH less than 2 or greater than 12.5.

3. Reactive in that the waste is normally unstable; reacts violently with water; forms an explosive mixture with water; contains quantities of cyanide or sulfur that could be released into the air in sufficient quantity to be a danger to human health; or can easily be detonated or exploded.

4. Toxicity characteristic leaching procedure (TCLP) (EPA Method 1311) toxic, in that a TCLP listed chemical constituent exceeds the EPA assigned concentration standard in 40 CFR Part 261 or the department assigned concentration standard in Table I of rule 567—113.7(455B). Waste from a residential building that is contaminated by lead-based paint (i.e., the waste fails the TCLP test for lead only) may be disposed of in an MSWLF unit. The purpose of this exclusion is to help prevent the exposure of children to lead-based paint. Therefore, the meaning of “residential building” in regard to this TCLP exclusion shall be interpreted broadly and include any building which children or parents may utilize as a residence (temporarily or permanently). Such residential buildings include, but are not limited to, single-family homes, apartment buildings, townhomes, condominiums, public housing, military barracks, nursing homes, hotels, motels, bunkhouses, and campground cabins.

(2) Polychlorinated biphenyl (PCB) wastes with a concentration equal to or greater than 50 parts per million (ppm).

(3) Free liquids, liquid waste and containerized liquids. For purposes of this subparagraph, “liquid waste” means any waste material that is determined to contain “free liquids” as defined by Method 9095B (Paint Filter Liquids Test), as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods (EPA Pub. No. SW-846). For the purposes of this subparagraph, “gas condensate” means the liquid generated as a result of the gas recovery process(es) at the MSWLF unit. However, free liquids and containerized liquids may be placed in MSWLF units if:

1. The containerized liquid is household waste other than septic waste. The container must be a small container similar in size to that normally found in household waste;

2. The waste is leachate or gas condensate derived from the MSWLF unit, whether it is a new or existing MSWLF unit or lateral expansion, and is designed with a composite liner and leachate collection system as described in paragraph 113.7(5)“a.” The owner or operator must demonstrate compliance with this subparagraph and place the demonstration in the operating record; or

3. The MSWLF unit is a research, development and demonstration (RD&D) project in which the department has authorized the addition of liquids and meets the applicable requirements of subrule 113.4(10).

(4) Septage, which is the raw material, liquids and pumpings from a septic system, unless treated pursuant to 567—Chapter 68.

(5) Appliances as defined pursuant to 567—Chapter 118, unless there is documentation that the appliance has been demanufactured pursuant to 567—Chapter 118.

(6) Radioactive waste, excluding luminous timepieces and other items using very small amounts of tritium.

(7) Infectious waste, unless managed and disposed of pursuant to 567—Chapter 109.

(8) Hot loads, meaning solid waste that is smoking, smoldering, emitting flames or hot gases, or otherwise indicating that the solid waste is in the process of combustion or close to igniting. Ash that has not been fully quenched or cooled is considered a hot load. Such wastes may be accepted at the gate, but shall be segregated and completely extinguished and cooled in a manner as safe and responsible as practical before disposal.

(9) Asbestos-containing material (ACM) waste with greater than 1 percent asbestos, unless managed and disposed of pursuant to 567—Chapter 109.

(10) Petroleum-contaminated soil, unless managed and remediated pursuant to 567—Chapter 120.

(11) Grit and bar screenings, and grease skimmings, unless managed and disposed of pursuant to 567—Chapter 109.

(12) Waste tires, unless each tire is processed into pieces no longer than 18 inches on any side. The department encourages the recycling of all waste tires, even if processed to disposal standards.

(13) Yard waste, except in the following circumstances:

1. When the yard waste is collected for disposal as a result of a severe storm and the yard waste originates in an area declared to be a disaster area in a declaration issued by the President of the United States or the governor.

2. When the yard waste is collected for disposal to control, eradicate, or prevent the spread of insect pests, tree and plant diseases, or invasive plant species.

3. When the yard waste is disposed of in a sanitary landfill that operates a methane collection system that produces energy. A methane collection system that burns landfill gas without using the energy for a purpose other than reducing the amount of methane released is not considered to be a system that produces energy.

(14) Lead-acid batteries.

(15) Waste oil and materials containing free-flowing waste oil. Materials contaminated with waste oil may be disposed of if no free-flowing oil is retained in the material, and the material is not a hazardous waste.

(16) Baled solid waste, unless the waste is baled on site after the waste has been visually inspected for prohibited materials.

*c. Open burning and fire hazards.* No open burning of any type shall be allowed within the permitted boundary of an MSWLF facility. The fueling of vehicles and equipment, and any other activity that may produce sparks or flame, shall be conducted at least 50 feet away from the working face.

*d. Scavenging and salvaging.* Scavenging shall not be allowed at the MSWLF facility. However, salvaging by MSWLF operators may be allowed.

*e. Animal feeding and grazing.* Feeding animals MSW shall not be allowed at an MSWLF facility. The grazing of domestic animals on fully vegetated areas of the MSWLF facility not used for disposal, including closed MSWLF units, may be allowed by the department so long as the animals do not cause damage or interfere with operations, inspections, environmental monitoring and other required activities. Large, hooved animals (including but not limited to buffalo, cattle, llamas, pigs, and horses) shall not be allowed on closed MSWLF units.

**113.8(2) Disposal operations and activities.** All MSWLFs shall comply with the following requirements.

*a. Survey controls and monuments.* Survey controls and monuments shall be maintained as follows.

(1) The property boundary, the permitted boundary and the boundaries of all MSWLF units shall be surveyed and marked by a professional land surveyor at least once prior to closure.

(2) Prior to waste placement, all new MSWLF unit boundaries shall be surveyed and marked by a professional engineer.

(3) Survey monuments shall be established to check vertical elevations and the progression of fill sequencing. The survey monuments shall be established and maintained by a professional land surveyor.

(4) All survey stakes and monuments shall be clearly marked.

(5) A professional engineer shall biennially inspect all survey monuments and replace missing or damaged survey monuments.

*b. First lift.* The first lift and initial placement of MSW over a new MSWLF unit liner and leachate collection system shall comply with the following requirements.

(1) Waste shall not be placed in the new MSWLF unit until the QC&A officer has submitted a signed and sealed final report to the department pursuant to paragraph 113.7(6)“d” and that report has been approved by the department.

(2) Construction and earth-moving equipment shall not operate directly on the liner and leachate management system. Waste disposal operations shall begin at the edge of the new MSWLF unit by pushing MSW out over the liner and leachate collection system. Compactors and other similarly heavy equipment shall not operate directly on the leachate collection system until a minimum of 4 feet of waste has been mounded over the top of the leachate collection system.

(3) Construction and demolition debris and materials clearly capable of spearing through the leachate collection system and liner shall not be placed in the first 4 feet of waste over the top of the leachate collection system. The first 4 feet of waste shall consist of select waste that is unlikely to damage the liner and performance of the leachate collection system.

(4) The owner or operator must place documentation in the operating record and submit a copy to the department that adequate cover material was placed over the top of the leachate collection system in the MSWLF unit or that freeze/thaw effects had no adverse impact on the compacted clay component of the liner.

*c. Fill sequencing.* The rate and phasing of disposal operations shall comply with the following requirements.

(1) The fill sequencing shall be planned and conducted in a manner and at a rate that do not cause a slope failure, lead to extreme differential settlement, or damage the liner and leachate collection system.

(2) The fill sequencing shall be planned and conducted in a manner compliant with the run-on and runoff requirements of subrule 113.7(8) and surface water requirements of rule 567—113.10(455B).

*d. Working face.* The working face shall comply with the following requirements.

(1) The working face shall be no larger than necessary to accommodate the rate of disposal in a safe and efficient manner.

(2) The working face shall not be so steep as to cause heavy equipment and solid waste collection vehicles to roll over or otherwise lose control.

(3) Litter control devices of sufficient size to help prevent blowing litter shall be utilized at the working face. The operation of the working face shall attempt to minimize blowing litter.

(4) The operation of the working face shall prevent the harborage of vectors and attempt to minimize the attraction of vectors.

(5) Employees at the working face shall be trained to visually recognize universal symbols, markings and indications of prohibited wastes pursuant to paragraph 113.8(1)“b.”

*e. Special wastes.* Special wastes shall be managed and disposed of pursuant to 567—Chapter 109.

*f. Cover material and alternative cover material.* Pursuant to 567—Chapter 108, alternative cover material of an alternative thickness (e.g., tarps, spray covers) may be authorized if the owner or operator demonstrates to the approval of the department that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Cover material or alternative cover material shall be available for use during all seasons in all types of weather. Cover material and alternative cover material shall be utilized as follows unless otherwise approved by the department pursuant to 567—Chapter 108:

(1) Daily cover. Six inches of cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging.

(2) Intermediate cover. At least 1 foot of compacted cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion

that has not or will not receive more waste for at least 30 days. At least 2 feet of compacted cover material or alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive waste for at least 180 days. Such active portions shall be graded to manage run-on and runoff pursuant to subrule 113.7(8). Such active portions shall be seeded if they will not receive waste for a full growing season.

(3) *Scarification of cover.* To help prevent leachate seeps by aiding the downward flow of leachate, cover material or alternative cover material, which prevents the downward flow of leachate and is at least 5 feet from the outer edge of the MSWLF unit, shall be scarified prior to use of that area as a working face. Cover material or alternative cover material that does not impede the downward flow of leachate, as approved by the department, does not require scarification. Scarification may be as simple as the spearing or breaking up of a small area of the cover. Areas of intermediate cover may require removal of some of the cover material or alternative cover material to aid the downward flow of leachate.

(4) *Final cover.* Final cover over an MSWLF unit that is to be closed shall be constructed and maintained according to the closure and postclosure requirements of rules 567—113.12(455B) and 567—113.13(455B).

*g. Leachate seeps.* Leachate seeps shall be contained and plugged upon being identified. Leachate seeps shall not be allowed to reach waters of the state. Soils outside of the MSWLF unit that are contaminated by a leachate seep shall be excavated and then disposed of within the MSWLF unit. Such soils may be used for daily cover material.

*h. Leachate recirculation.* The department must approve an MSWLF unit for leachate recirculation. The primary goal of the leachate recirculation system is to help stabilize the waste in a more rapid, but controlled, manner. The leachate recirculation system shall not contaminate waters of the state, contribute to erosion, damage cover material, harm vegetation, or spray persons at the MSWLF facility. Leachate recirculation shall be limited to MSWLF units constructed with a composite liner.

*i. Differential settlement.* Areas of differential settlement sufficient to interfere with runoff and run-on shall be brought back up to the contours of the surrounding active portion. Differential settlement shall not be allowed to cause ponding of water on the active portion.

**113.8(3) Facility operations and activities.** All MSWLFs shall comply with the following requirements.

*a. Controlled access.* Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

*b. Scales and weights.* A scale certified by the Iowa department of agriculture and land stewardship shall weigh all solid waste collection vehicles and solid waste transport vehicles. The owner or operator shall maintain a record of the weight of waste disposed of.

*c. All-weather access to disposal.* A disposal area shall be accessible during all weather conditions.

*d. Salvaged and processed materials.* Salvaged and processed materials (e.g., scrap metal, compost, mulch, aggregate, tire chips) shall be managed and stored in an orderly manner that does not create a nuisance or encourage the attraction or harborage of vectors.

*e. Vector control.* Owners or operators must prevent or control the on-site populations of vectors using techniques appropriate for the protection of human health and the environment.

*f. Litter control.* The operator shall take steps to minimize the production of litter and the release of windblown litter off site of the facility. All windblown litter off site of the facility shall be collected daily unless prevented by unsafe working conditions. On-site litter shall be collected daily unless prevented by working conditions. A dated record of unsafe conditions that prevented litter collection activities shall be maintained by the facility.

*g. Dust.* The operator shall take steps to minimize the production of dust so that unsafe or nuisance conditions are prevented. Leachate shall not be used for dust control purposes.

*h. Mud.* The operator shall take steps to minimize the tracking of mud by vehicles exiting the facility so that slick or unsafe conditions are prevented.

*i. Leachate and wastewater treatment.* The leachate management system shall be managed and maintained pursuant to the requirements of paragraph 113.7(5) “b.” Leachate collection pipes shall be cleaned and inspected as necessary, but not less than once every three years. Leachate and wastewater shall be treated as necessary to meet the pretreatment limits, if any, imposed by an agreement between the MSWLF and a publicly owned wastewater treatment works (POTW) or by the effluent discharge limits established by an NPDES permit. Documentation of the POTW agreement or NPDES permit must be submitted to the department. All leachate and wastewater treatment systems shall conform to department wastewater design standards.

*j. Financial assurance.* Financial assurance shall be maintained pursuant to rule 567—113.14(455B).

**113.8(4) Development and operations plan (DOPs).** An MSWLF unit shall maintain a development and operations plan (DOPs). At a minimum, the DOPs shall detail how the facility will operate and how compliance with the requirements of rule 567—113.8(455B) will be maintained. The DOPs shall contain at least the following components.

- a.* A title page and table of contents.
- b.* Telephone number of the official responsible for the operation of the facility and an emergency contact person if different.
- c.* Service area of the facility and political jurisdictions included in that area.
- d.* Days and hours of operation of the facility.
- e.* Details of how the site will comply with the prohibited operations and activity requirements of subrule 113.8(1) and any related permit conditions.
- f.* Details of how the site will comply with the disposal operation and activity requirements of subrule 113.8(2) and any related permit conditions.
- g.* Details of how the site will comply with the facility operations and activity requirements of subrule 113.8(3), any related permit conditions, and any leachate and wastewater treatment requirements.

**113.8(5) Emergency response and remedial action plan (ERRAP).** All MSWLFs shall develop, submit to the department for approval, and maintain on site an ERRAP.

- a. ERRAP submittal requirements.* An updated ERRAP shall be submitted to the department with any permit modification or renewal request that incorporates facility changes that impact the ERRAP.
- b. Content.* The ERRAP is intended to be a quick reference during an emergency. The content of the ERRAP shall be concise and readily usable as a reference manual by facility managers and operators during emergency conditions. The ERRAP shall contain and address at least the following components, unless facility conditions render the specific issue as not applicable. To facilitate department review, the rationale for exclusion of any issues that are not applicable must be provided either in the body of the plan or as a supplement. Additional ERRAP requirements unique to the facility shall be addressed as applicable.

- (1) Facility information.
  1. Permitted agency.
  2. DNR permit number.
  3. Responsible official and contact information.
  4. Certified operator and contact information.
  5. Facility description.
  6. Site and environs map.
- (2) Regulatory requirements.
  1. Iowa Code section 455B.306(6) “d” criteria citation.
  2. Reference to provisions of the permit.
- (3) Emergency conditions, response activities and remedial action.
  1. Failure of utilities.
    - Short-term (48 hours or less).
    - Long-term (over 48 hours).
  2. Evacuation procedures during emergency conditions.
  3. Weather-related events.

- Tornado and wind events.
  - Snow and ice.
  - Intense rainstorms, mud, and erosion.
  - Lightning strikes.
  - Flooding.
  - Event and postevent conditions.
4. Fire and explosions.
    - Waste materials.
    - Buildings and site.
    - Equipment.
    - Fuels.
    - Utilities.
    - Facilities.
    - Working area.
    - Hot loads.
    - Waste gases.
    - Explosive devices.
  5. Regulated waste spills and releases.
    - Waste materials.
    - Leachate.
    - Waste gases.
    - Waste stockpiles and storage facilities.
    - Waste transport systems.
    - Litter and airborne particulate.
    - Site drainage system.
    - Off-site releases.
  6. Hazardous material spills and releases.
    - Load-check control points.
    - Mixed waste deliveries.
    - Fuels.
    - Waste gases.
    - Site drainage systems.
    - Off-site releases.
  7. Mass movement of land and waste.
    - Earthquakes.
    - Slope failure.
    - Waste shifts.
    - Waste subsidence.
  8. Emergency and release notification and reporting.
    - Federal agencies.
    - State agencies.
    - County and city agencies including emergency management services.
    - News media.
    - Public and private facilities with special populations within five miles.
    - Reporting requirements and forms.
  9. Emergency waste management procedures.
    - Communications.
    - Temporary discontinuation of services—short-term and long-term.
    - Facilities access and rerouting.
    - Waste acceptance.
    - Wastes in process.
  10. Primary emergency equipment inventory.

- Major equipment.
- Fire hydrants and water sources.
- Off-site equipment resources.
- 11. Emergency aid.
  - Responder contacts.
  - Medical services.
  - Contracts and agreements.
- 12. ERRAP training requirements.
  - Training providers.
  - Employee orientation.
  - Annual training updates.
  - Training completion and record keeping.
- 13. Reference tables, figures and maps.

**113.8(6) MSWLF operator certification.** Sanitary landfill operators shall be trained, tested, and certified by a department-approved certification program.

*a.* A sanitary landfill operator shall be on duty during all hours of operation of a sanitary landfill, consistent with the respective certification.

*b.* To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or an alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this subrule. An operator certified by another state may have reciprocity subject to approval by the department.

*c.* A sanitary landfill operator certification is valid until June 30 of the following even-numbered year.

*d.* The required basic operator training course for a certified sanitary landfill operator shall have at least 25 contact hours and shall address the following areas, at a minimum:

- (1) Description of types of wastes.
- (2) Interpreting and using engineering plans.
- (3) Construction surveying techniques.
- (4) Waste decomposition processes.
- (5) Geology and hydrology.
- (6) Landfill design.
- (7) Landfill operation.
- (8) Environmental monitoring.
- (9) Applicable laws and regulations.
- (10) Permitting processes.
- (11) Leachate control and treatment.

*e.* Alternate basic operator training must be approved by the department. The applicant shall be responsible for submitting any documentation the department may require to evaluate the equivalency of alternate training.

*f.* Fees.

(1) The examination fee for each examination is \$20.

(2) The initial certification fee is \$8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.

(3) The certification renewal is \$24.

(4) The penalty fee is \$12.

*g.* Examinations.

(1) The operator certification examinations shall be based on the basic operator training course curriculum.

(2) All individuals wishing to take the examination required to become a certified operator of a sanitary landfill shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence

of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department and addressed to the central office in Des Moines. Application for examination must be received by the department at least 30 days prior to the date of examination.

(3) A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

(4) Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days between each subsequent examination.

(5) Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

(6) Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

(7) Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

(8) Oral examinations may be given at the discretion of the department.

*h.* Certification.

(1) All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators are required to take the basic operator training course and pass the examination in order to become certified.

(2) Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

(3) Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

(4) For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

(5) For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

(6) Applicants who seek Iowa certification pursuant to subparagraphs 113.8(6) "h"(4) and (5) shall submit an application for examination accompanied by a letter requesting certification pursuant to those subparagraphs. Application for certification pursuant to those subparagraphs shall be received by the department in accordance with subparagraphs 113.8(6) "h"(2) and (3).

*i.* Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

(1) Late application for renewal of a certificate may be made, provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms provided by the department and accompanied by the penalty fee and the certification renewal fee.

(2) If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with paragraph 113.8(6) "h."

(3) An operator shall not continue to operate a sanitary landfill after expiration of a certificate without renewal thereof.

(4) Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon issuance of certification.

(5) Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

(6) All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

(7) The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

(8) The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

(9) A certified operator shall be deemed to have complied with the continuing education requirements of this subrule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside the United States; or for other periods of active practice and absence from the state approved by the department.

*j.* Discipline of certified operators.

(1) Disciplinary action may be taken on any of the following grounds:

1. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to landfill operation.

2. Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

3. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

(2) Disciplinary sanctions allowable are:

1. Revocation of a certificate.

2. Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

(3) The procedure for discipline is as follows:

1. The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under subparagraph 113.8(6)“j”(1) and report the results of the investigation to the commission.

2. A disciplinary action may be prosecuted by the department.

3. Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator's position in the matter and to indicate whether informal resolution of the matter may be reached.

4. An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

5. The applicant's failure to communicate facts and positions relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

6. If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

7. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 567—Chapter 7 related to contested and certain other cases pertaining to license discipline.

*k.* Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

*l.* Temporary certification. A temporary operator of a sanitary landfill may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in paragraph 113.8(6)“j.” All MSWLFs shall have at least one MSWLF operator trained, tested and certified by a department-approved program.

[ARC 2692C, IAB 8/31/16, effective 10/5/16]

**567—113.9(455B) Environmental monitoring and corrective action requirements for air quality and landfill gas.** All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for air quality and landfill gas.

**113.9(1) Air criteria.** Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a state implementation plan (SIP) approved or promulgated by the department pursuant to Section 110 of the Clean Air Act.

**113.9(2) Landfill gas.** All MSWLFs shall comply with the following requirements for landfill gas. For purposes of this subrule, “lower explosive limit” means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

*a.* Owners or operators of all MSWLF units must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas pipeline, control or recovery system components);

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary; and

*b.* Owners or operators of all MSWLF units must implement a routine methane-monitoring program to ensure that the standards of paragraph 113.9(2)“a” are met. Such a program shall include routine subsurface methane monitoring (e.g., at select groundwater wells, at gas monitoring wells).

(1) The type and frequency of monitoring must be determined based on the following factors:

1. Soil conditions;

2. The hydrogeologic conditions surrounding the facility;

3. The hydraulic conditions surrounding the facility;

4. The location of facility structures (including potential subsurface preferential pathways such as, but not limited to, pipes, utility conduits, drain tiles and sewers) and property boundaries; and

5. The locations of structures near the outside of the facility to which or along which subsurface migration of methane gas may occur. Examples of such structures include, but are not limited to, houses, buildings, basements, crawl spaces, pipes, utility conduits, drain tiles and sewers.

(2) The minimum frequency of monitoring shall be quarterly.

*c.* If methane gas levels exceeding the limits specified in paragraph 113.9(2)“a” are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the department and department field office with jurisdiction over the MSWLF;

(2) Within 7 days of detection, place in the operating record and notify the department and department field office with jurisdiction over the MSWLF of the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the department and department field office with jurisdiction over the MSWLF that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

*d.* The owner or operator shall submit an annual report to the department detailing the gas monitoring sampling locations and results, any action taken, and the results of steps taken to address gas levels exceeding the limits of paragraph 113.9(2)“*a*” during the previous year. This report shall include a site map that delineates all structures, perimeter boundary locations, and other monitoring points where gas readings were taken. The site map shall also delineate areas of landfill gas migration outside the MSWLF units, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year at a date specified by the department in the facility’s permit.

**567—113.10(455B) Environmental monitoring and corrective action requirements for groundwater and surface water.** All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for groundwater and surface water.

**113.10(1) General requirements for environmental monitoring and corrective action for groundwater and surface water.** The following general requirements apply to all provisions of this rule.

*a.* Surface water requirements. MSWLF units shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402 of the Clean Water Act.

(2) Cause the discharge of a nonpoint source of pollution into waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.

*b.* A new MSWLF unit must be in compliance with the groundwater monitoring requirements specified in subrules 113.10(2), 113.10(4), 113.10(5) and 113.10(6) before waste can be placed in the unit.

*c.* Once established at an MSWLF unit, groundwater monitoring shall be conducted throughout the active life and postclosure care period of that MSWLF unit as specified in rule 567—113.13(455B).

*d.* For the purposes of this rule, a “qualified groundwater scientist” means a scientist or an engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

*e.* The department may establish alternative schedules for demonstrating compliance with:

(1) Subparagraph 113.10(2)“*e*”(3), pertaining to notification of placement of certification in operating record;

(2) Subparagraph 113.10(5)“*c*”(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record;

(3) Subparagraphs 113.10(5)“*c*”(2) and (3), pertaining to an assessment monitoring program;

(4) Paragraph 113.10(6)“*b*,” pertaining to sampling and analyzing Appendix II constituents;

(5) Subparagraph 113.10(6)“*d*”(1), pertaining to placement of notice (Appendix II constituents detected) in record and notification of placement of notice in record;

(6) Subparagraph 113.10(6)“*d*”(2), pertaining to sampling for Appendices I and II;

(7) Paragraph 113.10(6)“g,” pertaining to notification (and placement of notice in record) of SSI above groundwater protection standard;

(8) Numbered paragraph 113.10(6)“g”(1)“4” and paragraph 113.10(7)“a,” pertaining to assessment of corrective measures;

(9) Paragraph 113.10(8)“a,” pertaining to selection of remedy and notification of placement in record;

(10) Paragraph 113.10(9)“f,” pertaining to notification of placement in record (certification of remedy completed).

**113.10(2) *Groundwater monitoring systems.*** All MSWLFs shall have a groundwater monitoring system that complies with the following requirements:

*a.* A groundwater monitoring system must be installed that meets the following objectives:

(1) Yields groundwater samples from the uppermost aquifer that represent the quality of background groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where either:

1. Hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; or

2. Sampling at other wells will provide an indication of background groundwater quality that is as representative as or more representative than that provided by the upgradient wells.

(2) Yields groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance specified by the department under numbered paragraph 113.7(5)“a”(2)“2.” The downgradient monitoring system must be installed at the relevant point of compliance specified by the department under numbered paragraph 113.7(5)“a”(2)“2” that ensures detection of groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance, hydraulically downgradient from the relevant point of compliance specified by the department under numbered paragraph 113.7(5)“a”(2)“2,” that ensures detection of groundwater contamination in the uppermost aquifer.

(3) Provides a high level of certainty that releases of contaminants from the site can be promptly detected. Downgradient monitoring wells shall be placed along the site perimeter, within 50 feet of the planned liner or waste boundary unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored. Each groundwater underdrain system shall be included in the groundwater detection monitoring program under subrule 113.10(5). The maximum drainage area routed through each outfall shall not exceed 10 acres unless it can be demonstrated that site-specific factors such as drain flow capacity or site development sequencing require an alternative drainage area. If contamination is identified in the groundwater underdrain system pursuant to subrule 113.10(5), the owner or operator shall manage the underdrain discharge as leachate in lieu of assessment monitoring and corrective action.

(4) Be designed and constructed with the theoretical release evaluation pursuant to subparagraph 113.6(3)“e”(6) taken into consideration.

*b.* For those facilities which are long-term, multiphase operations, the department may establish temporary waste boundaries in order to define locations for monitoring wells. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the multiphase unit groundwater monitoring system meets the requirements of paragraphs 113.10(2)“a,” 113.10(2)“c,” 113.10(2)“d” and 113.10(2)“e” and will be as protective of human health and the environment as the individual monitoring systems for each MSWLF unit, based on the following factors:

- (1) Number, spacing, and orientation of the MSWLF units;
- (2) Hydrogeologic setting;
- (3) Site history;

- (4) Engineering design of the MSWLF units; and
- (5) Type of waste accepted at the MSWLF units.

c. Monitoring wells must be constructed and cased by a well contractor certified pursuant to 567—Chapter 82 in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. Monitoring wells constructed in accordance with the rules in effect at the time of construction shall not be required to be abandoned and reconstructed as a result of subsequent amendments to these rules unless the department finds that the well is no longer providing representative groundwater samples. See Figure 1 for a general diagram of a properly constructed monitoring well.

(1) The owner or operator must notify the department that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) Each groundwater monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. The types of groundwater monitoring points shall be identified as follows:

1. Monitoring wells by “MW# (Insert unique and permanent number)”.
2. Piezometers by “PZ# (Insert unique and permanent number)”.
3. Groundwater underdrain systems by “GU# (Insert unique and permanent number)”.

(4) Monitoring well construction shall be performed by a certified well contractor (pursuant to 567—Chapter 82) and shall comply with the following requirements:

1. In all phases of drilling, well installation and completion, the methods and materials used shall not introduce substances or contaminants that may alter the results of water quality analyses.

2. Drilling equipment that comes into contact with contaminants in the borehole or aboveground shall be thoroughly cleaned to avoid spreading contamination to other depths or locations. Contaminated materials or leachate from wells must not be discharged onto the ground surface or into waters of the state so as to cause harm in the process of drilling or well development.

3. The owner or operator must ensure that, at a minimum, the well design and construction log information is maintained in the facility’s permanent record using DNR Form 542-1277 and that a copy is sent to the department.

(5) Monitoring well casings shall comply with the following requirements:

1. The diameter of the inner well casing (see Figure 1) of a monitoring well shall be at least 2 inches.

2. Plastic-cased wells shall be constructed of materials with threaded and nonglued joints that do not allow water infiltration under the local subsurface pressure conditions and when the well is evacuated for sampling.

3. Well casing shall provide sufficient structural stability so that a borehole or well collapse does not occur. Flush joint casing is required for small diameter wells installed through hollow stem augers.

(6) Monitoring well screens shall comply with the following requirements:

1. Slot size shall be based on sieve analysis of the sand and gravel stratum or filter pack. The slot size must keep out at least 90 percent of the filter pack.

2. Slot configuration and open area must permit effective development of the well.

3. The screen shall be no longer than 10 feet in length, except for water table wells, in which case the screen shall be of sufficient length to accommodate normal seasonal fluctuations of the water table. The screen shall be placed 5 feet above and below the observed water table, unless local conditions are known to produce greater fluctuations. Screen length for piezometers shall be 2 feet or less. Multiple-screened, single-cased wells are prohibited.

(7) Monitoring well filter packs shall comply with the following requirements:

1. The filter pack shall extend at least 18 inches above and 12 inches below the well screen.
2. The size of the filter pack material shall be based on sieve analysis when sand and gravel are screened. The filter pack material must be 2.5 to 3 times larger than the 50 percent grain size of the zone being monitored.

3. In stratum that is neither sand nor gravel, the size of the filter pack material shall be selected based on the particle size of the zone being monitored.

(8) Monitoring well annular space shall comply with the following requirements:

1. Grouting materials must be installed from the top of the filter pack up in one continuous operation with a tremie tube.

2. The annular space between the filter pack and the frostline must be backfilled with bentonite grout.

3. The remaining annular space between the protective casing and the monitoring well casing must be sealed with bentonite grout from the frostline to the ground surface.

(9) Monitoring well heads shall be protected as follows:

1. Monitoring wells shall have a protective metal casing installed around the upper portion of the monitoring well casing as follows:

- The inside diameter of the protective metal casing shall be at least 2 inches larger than the outer diameter of the monitoring well casing.

- The protective metal casing shall extend from a minimum of 1 foot below the frostline to slightly above the well casing top; however, the protective casing shall be shortened if such a depth would cover a portion of the well screen.

- The protective casing shall be sealed and immobilized with a concrete plug around the outside. The bottom of the concrete plug must extend at least 1 foot below the frostline; however, the concrete plug shall be shortened if such a depth would cover a portion of the well screen. The top of the concrete plug shall extend at least 3 inches above the ground surface and slope away from the well. Soil may be placed above the plug and shall be at least 6 inches below the cap to improve runoff.

- The inside of the protective casing shall be sealed with bentonite grout from the frostline to the ground surface.

- A vented cap shall be placed on the monitoring well casing.

- A vented, locking cap shall be placed on the protective metal casing. The cap must be kept locked when the well is not being sampled.

2. All monitoring wells shall have a ring of brightly colored protective posts or other protective barriers to help prevent accidental damage.

3. All monitoring wells shall have a sign or permanent marking clearly identifying the permanent monitoring well number (MW#).

4. Run-on shall be directed away from all monitoring wells.

(10) Well development is required prior to the use of the monitoring well for water quality monitoring purposes. Well development must loosen and remove fines from the well screen and gravel pack. Any water utilized to stimulate well development must be of sufficient quality that future samples are not contaminated. Any gases utilized in well development must be inert gases that will not contaminate future samples. Following development, the well shall be pumped until the water does not contain significant amounts of suspended solids.

*d.* Groundwater monitoring points that are no longer functional must be sealed. Groundwater monitoring points that are to be sealed and are in a future waste disposal area shall be reviewed to determine if the method utilized to seal the monitoring point needs to be more protective than the following requirements. All abandoned groundwater-monitoring points (e.g., boreholes, monitoring wells, and piezometers) shall be sealed by a well contractor certified pursuant to 567—Chapter 82 and in accordance with the following requirements.

- (1) The following information shall be placed in the operating record and a copy sent to the department:

1. The unique, permanent monitoring point number.
2. The reasons for abandoning the monitoring point.

3. The date and time the monitoring point was sealed.
4. The method utilized to remove monitoring point materials.
5. The method utilized to seal the monitoring point.
6. Department Form 542-1226 for Water Well Abandonment Plugging Record.

(2) The monitoring point materials (e.g., protective casing, casing, screen) shall be removed. If drilling is utilized to remove the materials, then the drilling shall be to the maximum depth of the previously drilled monitoring point. All drilling debris shall be cleaned from the interior of the borehole.

(3) The cleared borehole shall be sealed with impermeable bentonite grout via a tremie tube. The end of the tremie tube shall be submerged in the grout while filling from the bottom of the borehole to the top of the ground surface. Uncontaminated water shall be added from the surface as needed to aid grout expansion.

(4) After 24 hours, the bentonite grout shall be retopped if it has settled below the ground surface.

e. Hydrologic monitoring system plan (HMSP). Unless otherwise approved by the department in writing, the number, spacing, and depth of groundwater monitoring points shall be:

(1) Determined based upon site-specific technical information, including but not limited to the soil and hydrogeologic investigation pursuant to subrule 113.6(3) and the site exploration and characterization report pursuant to subrule 113.6(4), that must include thorough characterization of:

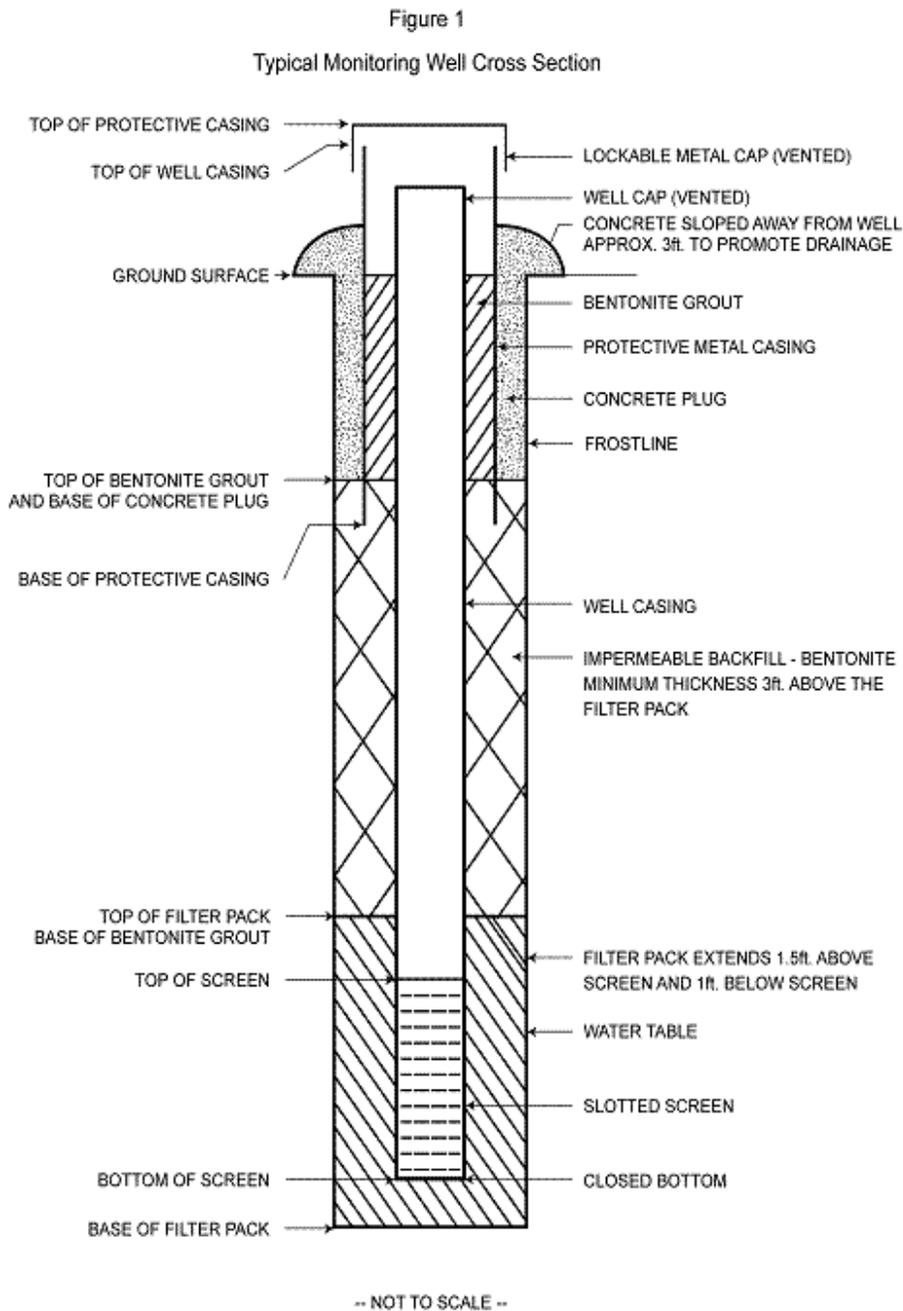
1. Aquifer thickness, groundwater flow rate, and groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

2. Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities; and

3. Projected paths and rates of movement of contaminants found in leachate pursuant to subparagraph 113.6(3)“e”(6).

(2) Designed and constructed with a maximum of 300 feet between downgradient groundwater monitoring wells, unless it is demonstrated by site-specific analysis or modeling that an alternative well spacing is justified. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the groundwater monitoring system meets the requirements of paragraphs 113.10(2)“a,” 113.10(2)“c,” 113.10(2)“d,” and 113.10(2)“e.”

(3) Certified by a qualified groundwater scientist, as defined in paragraph 113.10(1)“d,” and approved by the department. Within 14 days of this certification and approval by the department, the owner or operator must notify the department that the certification has been placed in the operating record.



*f.* Monitoring well maintenance and performance reevaluation plan. A monitoring well maintenance and performance reevaluation plan shall be included as part of the hydrologic monitoring system plan. The plan shall ensure that all monitoring points remain reliable. The plan shall provide for the following:

(1) A biennial examination of high and low water levels accompanied by a discussion of the acceptability of well location (vertically and horizontally) and exposure of the screened interval to the atmosphere.

(2) A biennial evaluation of water level conditions in the monitoring wells to ensure that the effects of waste disposal or well operation have not resulted in changes in the hydrologic setting and resultant flow paths.

(3) Measurements of well depths to ensure that wells are physically intact and not filling with sediment. Measurements shall be taken annually in wells which do not contain dedicated sampling pumps and every five years in wells containing dedicated sampling pumps.

(4) A biennial evaluation of well recharge rates and chemistry to determine if well deterioration is occurring.

**113.10(3) Surface water monitoring systems.** The department may require an MSWLF facility to implement a surface water monitoring program if there is reason to believe that a surface water of the state has been impacted as a result of facility operations (i.e., leachate seeps, sediment pond discharge) or a groundwater SSI over background has occurred.

a. A surface water monitoring program must be developed that consists of a sufficient number of monitoring points, designated at appropriate locations, to yield surface water samples that:

(1) Provide a representative sample of the upstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

(2) Provide a representative sample of the downstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

b. Surface water levels must be measured at a frequency specified in the facility's permit, within 1/10 of a foot at each surface water monitoring point immediately prior to sampling, each time surface water is sampled. The owner or operator must determine the rate and direction of surface water flow, if any, each time surface water is sampled. Surface water level and flow measurements for the same surface water of the state must be measured on the same day to avoid temporal variations that could preclude accurate determination of surface water flow and direction.

c. The owner or operator must notify and receive approval from the department for the designation or decommission of any surface water monitoring point, and must place that approval in the operating record.

d. The surface water monitoring points shall be designated to maintain sampling at that monitoring point throughout the life of the surface water monitoring program.

e. Each surface water monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. Surface water monitoring points shall be identified by "SW# (Insert unique and permanent number)".

f. The number, spacing, and location of the surface water monitoring points shall be determined based upon site-specific technical information, including:

(1) Water level, including seasonal and temporal fluctuations in water level; and

(2) Flow rate and flow direction, including seasonal and temporal fluctuations in flow.

g. The MSWLF may discontinue the surface water monitoring program if monitoring data indicates that facility operations are not impacting surface water.

**113.10(4) Groundwater sampling and analysis requirements.**

a. The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with subrule 113.10(2). The groundwater monitoring program shall utilize a laboratory certified by the department. The owner or operator must notify the department that the sampling and analysis program documentation has been placed in the operating record, and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. The groundwater monitoring programs must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. Groundwater samples shall not be field-filtered prior to laboratory analysis.

c. The sampling procedures and frequency must be protective of human health and the environment, and consistent with subrule 113.10(5).

d. Groundwater elevations must be measured at a frequency specified in the facility's permit, within 1/100 of a foot in each well immediately prior to purging, each time groundwater is sampled. The owner or operator must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

e. The owner or operator must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5) "a" or 113.10(6) "a." Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if the wells meet the requirements of subparagraph 113.10(2) "a"(1).

f. The number of samples collected to establish groundwater quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph 113.10(4) "g." The sampling procedures shall be those specified under paragraphs 113.10(5) "b" for detection monitoring, 113.10(6) "b" and 113.10(6) "d" for assessment monitoring, and 113.10(7) "b" for corrective action.

g. The owner or operator must specify in the operating record which of the following statistical methods will be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph 113.10(4) "h." The owner or operator must place a justification for this alternative in the operating record and notify the department of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph 113.10(4) "h."

h. The statistical method required pursuant to paragraph 113.10(4) "g" shall comply with the following performance standards:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level not less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be not less than 0.05; however, the Type I error level of not less than 0.01 for individual well comparisons must be maintained.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the

environment. The parameters shall be determined after the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern have been considered.

(4) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern have been considered.

(5) The statistical method shall account for data below the limit of detection (LD) by recording such data at one-half the limit of detection (i.e., LD/2) or as prescribed by the statistical method. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

*i.* The owner or operator must determine whether or not there is an SSI over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5) "a" or 113.10(6) "a."

(1) In determining whether an SSI has occurred, the owner or operator must compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subrule 113.10(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs 113.10(4) "g" and 113.10(4) "h."

(2) Within 45 days after completing sampling and analysis, the owner or operator must determine whether there has been an SSI over background at each monitoring well.

**113.10(5) Detection monitoring program.**

*a.* Detection monitoring is required at MSWLF units at all groundwater monitoring wells defined under subrule 113.10(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I and any additional parameters required by the department on a site-specific basis. An alternative list of constituents may be used if it can be demonstrated that the constituents removed are not reasonably expected to be in or derived from the waste contained in the unit and if the alternative list of constituents is expected to provide a reliable indication of leachate leakage or gas impact from the MSWLF unit.

(1) The department may establish an alternative list of inorganic indicator parameters for an MSWLF unit within Appendix I, in lieu of some or all of the heavy metals (constituents 1 to 15 in Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the groundwater. In determining alternative parameters, the department shall consider the following factors:

1. The types, quantities and concentrations of constituents in wastes managed at the MSWLF unit;
2. The mobility, stability and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;
3. The detectability of indicator parameters, waste constituents and reaction products in the groundwater; and
4. The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(2) Reserved.

*b.* The monitoring frequency for all constituents listed in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5) "a"(1) shall be at least semiannual (i.e., every six months) during the active life of the facility (including closure) and the postclosure period. Where insufficient background data exist, a minimum of five independent samples from each well, collected at intervals to account for seasonal and temporal variation, must be analyzed for the constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5) "a"(1) during the first year. At least one sample from each well must be collected and analyzed during subsequent

semiannual sampling events. The department may specify an appropriate alternative frequency for repeated sampling and analysis for constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“a”(1) during the active life (including closure) and the postclosure care period. The alternative frequency during the active life (including closure) shall be not less than annually. The alternative frequency shall be based on consideration of the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;
- (4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and
- (5) Resource value of the aquifer.

c. If the owner or operator determines, pursuant to paragraph 113.10(4)“i,” that there is an SSI over background for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“a”(1) at any monitoring well specified under subrule 113.10(2), then the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the department that this notice was placed in the operating record.

(2) Must establish within 90 days an assessment monitoring program meeting the requirements of subrule 113.10(6) except as provided in subparagraph 113.10(5)“c”(3).

(3) The owner or operator may demonstrate that a source other than an MSWLF unit caused the contamination or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If resampling is a part of the demonstration, resampling procedures shall be specified prior to initial sampling. If a successful demonstration to the department is made and documented, the owner or operator may continue detection monitoring as specified in subrule 113.10(5). If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in subrule 113.10(6).

**113.10(6) Assessment monitoring program.**

a. Assessment monitoring is required whenever an SSI over background has been confirmed pursuant to paragraph 113.10(5)“c” to be the result of a release from the facility.

b. Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete Appendix II analysis, a minimum of four independent samples from each well must be collected and analyzed to establish background for the constituents. The department may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The department may delete any of the Appendix II monitoring parameters for an MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

c. The department may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph 113.10(6)“b” during the active life (including closure) and postclosure care period of the unit. The following factors shall be considered:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;
- (4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel);
- (5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this paragraph.

*d.* After obtaining the results from the initial or subsequent sampling events required in paragraph 113.10(6)“*b*,” the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the department that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by subrule 113.10(2) and conduct analyses for all constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“*a*”(1), and for those constituents in Appendix II that are detected in response to the requirements of paragraph 113.10(6)“*b*.” Concentrations shall be recorded in the facility operating record. At least one sample from each well must be collected and analyzed during these sampling events. The department may specify an alternative monitoring frequency during the active life (including closure) and the postclosure period for the constituents referred to in this subparagraph. The alternative frequency for constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“*a*”(1) during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph 113.10(6)“*c*”;

(3) Establish background concentrations for any constituents detected pursuant to paragraph 113.10(6)“*b*” or subparagraph 113.10(6)“*d*”(2); and

(4) Establish groundwater protection standards for all constituents detected pursuant to paragraph 113.10(6)“*b*” or 113.10(6)“*d*.” The groundwater protection standards shall be established in accordance with paragraph 113.10(6)“*h*” or 113.10(6)“*i*.”

*e.* If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in paragraph 113.10(4)“*g*” for two consecutive sampling events, the owner or operator must notify the department of this finding and may return to detection monitoring.

*f.* If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under paragraph 113.10(6)“*h*” or 113.10(6)“*i*,” using the statistical procedures in paragraph 113.10(4)“*g*,” the owner or operator must continue assessment monitoring in accordance with this subrule.

*g.* If one or more Appendix II constituents are detected at statistically significant levels above the groundwater protection standard established under paragraph 113.10(6)“*h*” or 113.10(6)“*i*” in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the groundwater protection standard and notify the department and all other appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1) Must, within 90 days of this finding, comply with the following requirements or the requirements in subparagraph 113.10(6)“*g*”(2):

1. Characterize the nature and extent of the release by installing additional monitoring wells as necessary until the horizontal and vertical dimensions of the plume have been defined to background concentrations;

2. Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subparagraph 113.10(6)“*g*”(2);

3. Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off site when indicated by sampling of wells in accordance with subparagraph 113.10(6)“*g*”(1); and

4. Initiate an assessment of corrective measures as required by subrule 113.10(7).

(2) May demonstrate that a source other than an MSWLF unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to subrule 113.10(6), and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph 113.10(6)“*e*.” Until a successful demonstration

is made, the owner or operator must comply with paragraph 113.10(6)“g” including initiating an assessment of corrective measures.

*h.* The owner or operator must establish a groundwater protection standard for each Appendix II constituent detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under Section 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with subrule 113.10(2); or

(3) For constituents for which the background concentration is higher than the MCL identified under subparagraph 113.10(6)“h”(1) or health-based concentrations identified under paragraph 113.10(6)“i,” the background concentration.

*i.* The department may establish an alternative groundwater protection standard for constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based concentrations that comply with the statewide standards for groundwater established pursuant to 567—Chapter 137.

*j.* In establishing alternative groundwater protection standards under paragraph 113.10(6)“i,” the department may consider the following:

(1) The policies set forth by the Groundwater Protection Act;

(2) Multiple contaminants in the groundwater with the assumption that the effects are additive regarding detrimental effects to human health and the environment;

(3) Exposure threats to sensitive environmental receptors; and

(4) Other site-specific exposure or potential exposure to groundwater.

**113.10(7) *Assessment of corrective measures.***

*a.* Within 90 days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the groundwater protection standards defined under paragraph 113.10(6)“h” or 113.10(6)“i,” the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed and submitted to the department for review and approval within 180 days of the initial finding unless otherwise authorized or required by the department.

*b.* The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in subrule 113.10(6).

*c.* The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subrule 113.10(8), addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(ies).

*d.* Within 60 days of approval from the department of the assessment of corrective measures, the owner or operator must discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The department may establish an alternative schedule for completing the public meeting requirement. Notice of public meeting shall be sent to all owners and occupiers of property adjacent to the permitted boundary of the facility, the department, and the department field office with jurisdiction over the facility. A copy of the minutes of this public meeting and the list of community concerns must be placed in the operating record and submitted to the department.

**113.10(8) *Selection of remedy.***

*a.* Based on the results of the corrective measures assessment conducted under subrule 113.10(7), the owner or operator must select a remedy within 60 days of holding the public meeting that, at a

minimum, meets the standards listed in paragraph 113.10(8)“b.” The department may establish an alternative schedule for selecting a remedy after holding the public meeting. The owner or operator must submit a report to the department, within 14 days of selecting a remedy, describing the selected remedy, stating that the report has been placed in the operating record, and explaining how the selected remedy meets the standards in paragraph 113.10(8)“b.”

*b.* Remedies must:

- (1) Be protective of human health and the environment;
- (2) Attain the groundwater protection standards specified pursuant to paragraph 113.10(6)“h” or 113.10(6)“i”;
- (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and
- (4) Comply with standards for management of wastes as specified in paragraph 113.10(9)“d.”

*c.* In selecting a remedy that meets the standards of paragraph 113.10(8)“b,” the owner or operator shall consider the following evaluation factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedy(ies), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

1. Magnitude of reduction of existing risks;
2. Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
3. The type and degree of long-term management required, including monitoring, operation, and maintenance;
4. Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, redisposal, or containment;
5. Time period until full protection is achieved;
6. Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
7. Long-term reliability of the engineering and institutional controls; and
8. Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

1. The extent to which containment practices will reduce further releases; and
2. The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(ies) based on consideration of the following factors:

1. Degree of difficulty associated with constructing the technology;
2. Expected operational reliability of the technology;
3. Need to coordinate with and obtain necessary approvals and permits from other agencies;
4. Availability of necessary equipment and specialists; and
5. Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of technical and economic capabilities.

(5) The degree to which community concerns, including but not limited to the concerns identified at the public meeting required pursuant to paragraph 113.10(7)“d,” are addressed by a potential remedy(ies).

*d.* The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in subparagraphs 113.10(8)“d”(1)

to (8). The owner or operator must consider the following factors in determining the schedule of remedial activities:

- (1) Extent and nature of contamination;
- (2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under paragraph 113.10(6) "h" or 113.10(6) "i" and other objectives of the remedy;
- (3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) Desirability of utilizing alternative or experimental technologies that are not widely available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- (6) Resource value of the aquifer including:
  1. Current and future uses;
  2. Proximity and withdrawal rate of users;
  3. Groundwater quantity and quality;
  4. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
  5. The hydrogeologic characteristics of the facility and surrounding land;
  6. Groundwater removal and treatment costs; and
  7. The cost and availability of alternative water supplies;
- (7) Practicable capability of the owner or operator; and
- (8) Other relevant factors.

**113.10(9) *Implementation of the corrective action plan.***

a. Based on the schedule established under paragraph 113.10(8) "d" for initiation and completion of remedial activities, the owner or operator must:

- (1) Establish and implement a corrective action groundwater monitoring program that:
  1. At a minimum, meets the requirements of an assessment monitoring program under subrule 113.10(6);
  2. Indicates the effectiveness of the corrective action remedy; and
  3. Demonstrates compliance with groundwater protection standards pursuant to paragraph 113.10(9) "e";
- (2) Implement the corrective action remedy selected under subrule 113.10(8); and
- (3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subrule 113.10(8). The following factors must be considered by an owner or operator in determining whether interim measures are necessary:
  1. Time period required to develop and implement a final remedy;
  2. Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
  3. Actual or potential contamination of drinking water supplies or sensitive ecosystems;
  4. Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;
  5. Weather conditions that may cause hazardous constituents to migrate or be released;
  6. Risk of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or the failure of a container or handling system; and
  7. Other factors that may pose threats to human health and the environment.

b. An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with the requirements of paragraph 113.10(8) "b" is not being achieved through the remedy selected. In such cases, the owner or operator

must notify the department and implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph 113.10(9)“c.” The notification shall explain how the proposed alternative methods or techniques will meet the standards in paragraph 113.10(8)“b,” or the notification shall indicate that the determination was made pursuant to paragraph 113.10(9)“c.” The notification shall also specify a schedule(s) for implementing and completing the remedial activities to comply with paragraph 113.10(8)“b” or the alternative measures to comply with paragraph 113.10(9)“c.” Within 90 days of approval by the department for the proposed alternative methods or techniques or the determination of impracticability, the owner or operator shall implement the proposed alternative methods or techniques meeting the standards of paragraph 113.10(8)“b” or implement alternative measures meeting the requirements of subparagraphs 113.10(9)“c”(2) and (3).

c. If the owner or operator determines that compliance with requirements under paragraph 113.10(8)“b” cannot be practicably achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified groundwater scientist and approval by the department that compliance with requirements under paragraph 113.10(8)“b” cannot be practicably achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

1. Technically practicable; and

2. Consistent with the overall objective of the remedy; and

(4) Notify the department within 14 days that a report justifying the alternate measures prior to implementation has been placed in the operating record.

d. All solid wastes that are managed pursuant to a remedy required under subrule 113.10(8), or an interim measure required under subparagraph 113.10(9)“a”(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA, state and local requirements.

e. Remedies selected pursuant to subrule 113.10(8) shall be considered complete when:

(1) The owner or operator complies with the groundwater protection standards established under paragraph 113.10(6)“h” or 113.10(6)“i” at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under subrule 113.10(2).

(2) Compliance with the groundwater protection standards established under paragraph 113.10(6)“h” or 113.10(6)“i” has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in paragraphs 113.10(4)“g” and 113.10(4)“h.” The department may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s), taking into consideration:

1. The extent and concentration of the release(s);

2. The behavior characteristics of the hazardous constituents in the groundwater;

3. The accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variables that may affect accuracy; and

4. The characteristics of the groundwater.

(3) All actions required by the department to complete the remedy have been satisfied.

f. Upon completion of the remedy, the owner or operator must notify the department within 14 days that a certification has been placed in the operating record verifying that the remedy has been completed in compliance with the requirements of paragraph 113.10(9)“e.” The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

g. When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph 113.10(9)“e,”

the owner or operator shall be released from the requirements for financial assurance for corrective action pursuant to subrule 113.14(5).

**113.10(10) Annual water quality reports.** The owner or operator shall submit an annual report to the department detailing the water quality monitoring sampling locations and results, assessments, selection of remedies, implementation of corrective action, and the results of corrective action remedies to address SSIs, if any, during the previous year. This report shall include a site map that delineates all monitoring points where water quality samples were taken, and plumes of contamination, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year on a date set by the department in the facility's permit.

**567—113.11(455B,455D) Record-keeping and reporting requirements.** The primary purpose of the record-keeping and reporting activities is to verify compliance with this chapter and to document the construction and operations of the facility. The department can set alternative schedules for record-keeping and notification requirements as specified in subrules 113.11(1) and 113.11(2), except for the notification requirements in paragraph 113.6(2) "a" and numbered paragraph 113.10(6) "g"(1) "3." All MSWLFs shall comply with the following record-keeping and reporting requirements.

**113.11(1) Record keeping.** The owner or operator of an MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the department the following information as it becomes available:

- a. Permit application, permit renewal and permit modification application materials pursuant to rule 567—113.5(455B);
- b. The site exploration and characterization reports pursuant to subrule 113.6(4);
- c. Design and construction plans and specifications, and related analyses and documents, pursuant to rule 567—113.7(455B). The QC&A final reports, and related analyses and documents, pursuant to paragraph 113.7(6) "d";
- d. Inspection records, training procedures, and notification procedures required in rule 567—113.8(455B);
- e. Any MSWLF unit design documentation for placement of leachate or gas condensate in an MSWLF unit as required under numbered paragraphs 113.8(1) "b"(3) "2" and "3";
- f. Gas monitoring results from monitoring and any remediation plans required by rule 567—113.9(455B);
- g. Any demonstration, certification, finding, monitoring, testing, or analytical data required by rule 567—113.10(455B);
- h. Closure and postclosure care plans and any monitoring, testing, or analytical data as required by rules 567—113.12(455B) and 567—113.13(455B); and
- i. Any cost estimates and financial assurance documentation required by this chapter.

**113.11(2) Reporting requirements.** The owner or operator must notify the department when the documents required in subrule 113.11(1) have been placed in the operating record. All information contained in the operating record must be furnished upon request to the department and be made available at all reasonable times for inspection by the department.

**567—113.12(455B) Closure criteria.** All MSWLFs shall comply with the following closure requirements.

**113.12(1)** Owners or operators of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

- a. Have a permeability less than or equal to the permeability of any bottom liner system (for MSWLFs with some type of liner) or have a permeability no greater than  $1 \times 10^{-7}$  cm/sec, whichever is less;
- b. Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of compacted earthen material;
- c. Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 24 inches of earthen material that is capable of sustaining native plant growth;

*d.* Have an infiltration layer and erosion layer that are a combined minimum of 42 inches of earthen material at all locations over the closed MSWLF unit; and

*e.* Have a slope between 5 percent and 25 percent. Steeper slopes may be used if it is demonstrated that a steeper slope is unlikely to adversely affect final cover system integrity.

**113.12(2)** The department may approve an alternative final cover design that includes:

*a.* An infiltration layer that achieves reduction in infiltration equivalent to the infiltration layer specified in paragraphs 113.12(1)“*a*” and 113.12(1)“*b*”; and

*b.* An erosion layer that provides protection from wind and water erosion equivalent to the erosion layer specified in paragraphs 113.12(1)“*c*” and 113.12(1)“*d*.”

**113.12(3)** The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during the active life in accordance with the cover design requirements in subrule 113.12(1) or 113.12(2), as applicable. The closure plan, at a minimum, must include the following information:

*a.* A description of the final cover including source, volume, and characteristics of cover material, designed in accordance with subrule 113.12(1) or 113.12(2) and the methods and procedures to be used to install the cover;

*b.* An estimate of the largest area of the MSWLF unit requiring a final cover, as required under subrule 113.12(1) or 113.12(2), at any time during the active life;

*c.* An estimate of the maximum inventory of wastes on site over the active life of the landfill facility; and

*d.* A schedule for completing all activities necessary to satisfy the closure criteria in rule 567—113.12(455B).

**113.12(4)** The owner or operator must notify the department that the closure plan has been placed in the operating record no later than the initial receipt of waste in a new MSWLF unit.

**113.12(5)** At least 180 days prior to beginning closure of each MSWLF unit as specified in subrule 113.12(6), an owner or operator must notify the department of the intent to close the MSWLF unit, and that a notice of the intent to close the unit has been placed in the operating record. If the MSWLF facility will no longer be accepting MSW for disposal, then the owner or operator must also notify all local governments utilizing the facility and post a public notice of the intent to close and no longer to accept MSW.

**113.12(6)** The owner or operator must begin closure activities of each MSWLF unit:

*a.* No later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes; or

*b.* If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

**113.12(7)** The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in subrule 113.12(6). Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

**113.12(8)** Following closure of each MSWLF unit, the owner or operator must submit to the department certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that closure has been completed in accordance with the closure plan. Upon approval by the department, the certification shall be placed in the operating record.

**113.12(9)** Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search in lieu of a deed notification, and notify the department that the notation has been recorded and

a copy has been placed in the operating record. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

- a. The land has been used as a landfill facility; and
- b. Its use is restricted under paragraph 113.13(3)“c.”

**113.12(10)** The owner or operator may request permission from the department to remove the notation from the deed if all wastes are removed from the facility.

**567—113.13(455B) Postclosure care requirements.** All MSWLFs shall comply with the following postclosure care requirements.

**113.13(1)** Following closure of each MSWLF unit, the owner or operator must conduct postclosure care. Postclosure care must be conducted for 30 years, except as provided under subrule 113.13(2), and consist of at least the following:

- a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;
- b. Maintaining and operating the leachate collection system in accordance with the requirements in paragraphs 113.7(5)“b” and 113.8(3)“i,” if applicable. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- c. Monitoring the groundwater in accordance with the requirements of rule 567—113.10(455B) and maintaining the groundwater monitoring system; and
- d. Maintaining and operating the gas monitoring system in accordance with the requirements of rule 567—113.9(455B).

**113.13(2)** The length of the postclosure care period may be:

- a. Decreased by the department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the department; or
- b. Increased by the department if the department determines that the lengthened period is necessary to protect human health and the environment.

**113.13(3)** The owner or operator of all MSWLF units must prepare a written postclosure plan that includes, at a minimum, the following information:

- a. A description of the monitoring and maintenance activities required in subrule 113.13(1) for each MSWLF unit, and the frequency at which these activities will be performed;
- b. Name, address, and telephone number of the person or office to contact about the facility during the postclosure period; and
- c. A description of the planned uses of the property during the postclosure period. Postclosure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this chapter. The department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

**113.13(4)** The owner or operator must notify the department that a postclosure plan has been prepared and placed in the operating record by the date of initial receipt of waste.

**113.13(5)** Following completion of the postclosure care period for each MSWLF unit, the owner or operator must submit to the department a certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that postclosure care has been completed in accordance with the postclosure plan. Upon department approval, the certification shall be placed in the operating record.

**567—113.14(455B) Municipal solid waste landfill financial assurance.**

**113.14(1) Purpose.** The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, postclosure care and corrective action at MSWLFs.

**113.14(2) Applicability.** The requirements of this rule apply to all owners and operators of MSWLFs except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

**113.14(3) Financial assurance for closure.** The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with rule 567—113.12(455B). Proof of compliance pursuant to paragraphs 113.14(3) “a” through 113.14(3) “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8) “e” and 455B.306(6) “c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(8) “b.”

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6) “a” to 113.14(6) “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by paragraph 103.5(1) “i” and rule 567—113.12(455B). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the MSWLF at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 113.14(3) “a” through 113.14(3) “e” and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;

6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**113.14(4) *Financial assurance for postclosure care.*** The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 113.14(4) "a" through 113.14(4) "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8) "e" and 455B.306(6) "c," and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8) "b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6) "a" to 113.14(6) "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the postclosure plan developed pursuant to paragraph 113.5(1) "i" and rule 567—113.13(455B). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period.

(1) The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

(2) The costs contained in the third-party estimate for postclosure care must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care.

(5) The owner or operator may reduce the amount of financial assurance for postclosure care if the most recent estimate of the maximum cost of postclosure care beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 113.14(4) "a" through 113.14(4) "e" and

must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure care and account for at least the following factors determined by the department to be minimal necessary costs for postclosure care:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Engineering and technical services;
14. Legal, financial and administrative services; and
15. Financial assurance, accounting, audits and reports.

*d.* For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

*e.* Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**113.14(5)** *Financial assurance for corrective action.*

*a.* An owner or operator required to undertake corrective action pursuant to rules 567—113.9(455B) and 567—113.10(455B) must have a detailed written estimate, in current dollars, prepared by an Iowa licensed professional engineer of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or MSWLF conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

*b.* The owner or operator of an MSWLF required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 113.14(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

**113.14(6) Allowable financial assurance mechanisms.** The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(8)“a” must ensure that the funds necessary to meet the costs of closure, postclosure care, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 113.14(6)“a” to 113.14(6)“i.”

*a. Trust fund.*

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, and corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 113.14(3) and 113.14(4) and placed in the facility’s official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a trust fund for closure or postclosure care; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the amount specified in subrule 113.14(9) for closure or postclosure care divided by the number of years in the pay-in period as defined in subparagraph 113.14(6)“a”(2).

The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in 113.14(9) for closure or postclosure care (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 113.14(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure care, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as they are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure care, or corrective action and if justification and documentation of the costs are placed in the operating

record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

*b. Surety bond guaranteeing payment or performance.*

(1) An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 113.14(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 113.14(6) "b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 113.14(6) "a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 113.14(6) "a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this chapter. A failure to comply with subparagraph 113.14(6) "b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

*c. Letter of credit.*

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subrule. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit

and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8) "b." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(8) "b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

*d. Insurance.*

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining insurance which conforms to the requirements of this subrule. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide postclosure care for the MSWLF unit whenever the postclosure care period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure care, may receive reimbursements for closure or postclosure expenditures, including partial closure, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure care, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8) "b." If the owner or operator has not complied with this subrule within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subrule within the 60-day period shall make the insurer liable for the closure and postclosure care of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

*e. Corporate financial test.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 113.14(6) "e"(1)"1" to "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure care, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus \$10 million except as provided in the second bulleted paragraph of numbered paragraph 113.14(6) "e"(1)"2"; or
- Net worth of \$10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure care, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 113.14(6) "e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of

solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:
  - Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 113.14(3) to 113.14(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
  - Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 113.14(6)“e”(1).
2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.
3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subparagraph 113.14(6)“e”(1) that differs from data in the audited financial statements referred to in numbered paragraph 113.14(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 113.14(6)“e”(1)“2,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least \$10 million plus the amount of any guarantees provided.
  - (3) The owner or operator may cease the submission of the information required by paragraph 113.14(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.
  - (4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 113.14(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 113.14(6)“e”(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 113.14(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.
  - (5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 113.14(6)“e,” the owner or operator must include cost estimates required for subrules 113.14(3) to 113.14(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures

those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

*f. Local government financial test.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 113.14(6) "f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 113.14(6) "f"(1) "2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

- "Deficit" means total annual revenues minus total annual expenditures.

- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure care costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 113.14(6) "f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 113.14(6) "f"(1) "1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 113.14(6) "f"(2) and (4); and

- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 113.14(6) "f"(1) "1," second bulleted paragraph, if applicable; and the requirements of numbered paragraph 113.14(6) "f"(1) "2" and the third and fourth bulleted paragraphs of numbered paragraph 113.14(6) "f"(1) "3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 113.14(6) "f"(3) "1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 113.14(6) "f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government at any time. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure care, and corrective action costs which an owner or operator may assure under this subrule is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure care, and corrective action costs it seeks to assure under this subparagraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 113.14(6) "f"(4) "1" and "2."

*g. Corporate guarantee.*

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 113.14(6) "g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6) "g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required (performance guarantee);
- Establish a fully funded trust fund as specified in paragraph 113.14(6) "a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 113.14(6) "g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6) "a." If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 113.14(6) "e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 113.14(6) "g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

*h. Local government guarantee.* An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 113.14(6) "f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6)“h”(1)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required; or

- Establish a fully funded trust fund as specified in paragraph 113.14(6)“a” in the name of the owner or operator; or

- Obtain alternative financial assurance as required by numbered paragraph 113.14(6)“h”(1)“3.”

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6)“a.” If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 113.14(6)“f”(3) and place a copy in the facility’s official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 113.14(6)“h”(2)“1” when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 113.14(6)“f,” the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

*i. Local government dedicated fund.* The owner or operator of a publicly owned MSWLF or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 113.14(6)“i”(1) or (2) below, and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure care, or corrective action costs, whichever is applicable, arising from the operation of the MSWLF and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the MSWLF, whichever is shorter, in the case of a dedicated fund for closure or postclosure care; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the “pay-in period.” The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure care or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 113.14(9), divided by the number of years in the pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

**113.14(7) General requirements.**

*a.* Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this subrule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure care, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

*b.* Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this subrule for multiple MSWLFs by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure care, or corrective action, whichever is applicable, for all MSWLFs covered.

*c.* Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure care, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action plan has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

*d.* No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 567—113.14(455B).

**113.14(8) Closure and postclosure accounts.** The holder of a permit for an MSWLF shall maintain a separate account for closure and postclosure care as required by Iowa Code section 455B.306(8)“*b.*” The account shall be specific to a particular facility.

*a.* Definitions. For the purpose of this subrule, the following definitions shall apply:

“*Account*” means a formal, separate set of records.

“*Current balance*” means cash in an account established pursuant to this rule plus the current value of investments of moneys collected pursuant to subrule 113.14(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

“*Current cost estimate*” means the closure cost estimate prepared and submitted to the department pursuant to subrule 113.14(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 113.14(4).

*b.* Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

*c.* Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

*d.* Withdrawal of funds. Except as provided in paragraph 113.14(8)“*e.*” moneys in the accounts may be withdrawn without departmental approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to paragraph 113.5(1)“*i.*” Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 113.14(6)“*a.*” to satisfy the requirements of this subrule must comply with the requirements of subparagraph 113.14(6)“*a.*”(6) prior to withdrawal.

*e.* Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

*f.* Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2003, that indicates that accounts have been established pursuant to this subrule. Permit holders for new MSWLFs permitted after April 1, 2003, shall submit to the department prior to the MSWLF’s initial receipt of waste a statement of account, signed by the permit holder.

*g.* An account established pursuant to paragraph 113.14(6)“*a.*” for trust funds or paragraph 113.14(6)“*i.*” for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts. Accounts established pursuant to paragraph 113.14(6)“*a.*” or 113.14(6)“*i.*” which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(8)“*b.*”

*h.* Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility’s first fiscal year that begins after June 30, 2002. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

“CE” means the current cost estimate of closure and postclosure costs.

“CB” means the current balance of the closure or postclosure accounts.

“RPC” means the remaining permitted capacity, in tons, of the MSWLF as of the start of the permit holder’s fiscal year.

“TR” is the number of tons of solid waste disposed of at the facility in the prior year.

*i.* Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 113.14(3) “a” and 113.14(4) “a.”

*j.* The department shall have full rights of access to all funds existing in a facility’s closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

**113.14(9) Amount of required financial assurance.** A financial assurance mechanism established pursuant to subrule 113.14(6) shall be in the amount of the third-party cost estimates required by subrules 113.14(3), 113.14(4), and 113.14(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 113.14(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

**567—113.15(455B,455D) Variances.** A request for a variance to this chapter shall be submitted in writing pursuant to 561—Chapter 10. Some provisions of this chapter are minimum standards required by federal law (see 40 CFR 258), and variances to such provisions shall not be granted unless they are as protective as the applicable minimum federal standards.

Appendix I  
Constituents for Detection Monitoring<sup>1</sup>

Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)

Organic Constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6

Organic Constituents:	
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

## Notes:

<sup>1</sup>This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

<sup>2</sup>Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

<sup>3</sup>Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

Appendix II  
List of Hazardous Inorganic and Organic Constituents<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100 8270	200 10
Acenaphthylene	208-96-8	Acenaphthylene	8100 8270	200 10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20
Acrolein	107-02-8	2-Propenal	8030 8260	5 100
Acrylonitrile	107-13-1	2-Propenenitrile	8030 8260	5 200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4, 10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-	8080 8270	0.05 10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010 8260	5 10
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8270	20
Anthracene	120-12-7	Anthracene	8100 8270	200 10
Antimony	(Total)	Antimony	6010 7040 7041	300 2000 30
Arsenic	(Total)	Arsenic	6010 7060 7061	500 10 20
Barium	(Total)	Barium	6010 7080	20 1000

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Benzene	71-43-2	Benzene	8020 8021 8260	2 0.1 5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100 8270	200 10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100 8270	200 10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100 8270	200 10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100 8270	200 10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100 8270	200 10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010 7090 7091	3 50 2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	8080 8270	0.05 10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	8080 8270	0.05 20
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	8080 8270	0.1 20
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	8080 8270	0.05 20
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1 <sup>1</sup> -[methylene bis(oxy)] bis[2-chloro-	8110 8270	5 10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1 <sup>1</sup> -oxybis[2-chloro-	8110 8270	3 10
Bis-(2-chloro-1-methylethyl) ether; 2,2 <sup>1</sup> -Dichlorodiisopropyl ether; DCIP, see Note 7	108-60-1	Propane, 2,2 <sup>1</sup> -oxybis[1-chloro-	8110 8270	10 10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021 8260	0.1 5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010 8021 8260	1 0.2 5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010 8021 8260	2 15 5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110 8270	25 10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060 8270	5 10
Cadmium	(Total)	Cadmium	6010 7130 7131	40 50 1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010 8021 8260	1 0.1 10
Chlordane	See Note 8	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080 8270	0.1 50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010 8020 8021 8260	2 2 0.1 5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro- $\alpha$ -(4-chlorophenyl)- $\alpha$ -hydroxy-, ethyl ester	8270	10
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040 8270	5 20

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010 8021 8260	5 1 10
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8010 8021 8260	0.5 0.2 5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120 8270	10 10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040 8270	5 10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110 8270	40 10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010 8260	50 20
Chromium	(Total)	Chromium	6010 7190 7191	70 500 10
Chrysene	218-01-9	Chrysene	8100 8270	200 10
Cobalt	(Total)	Cobalt	6010 7200 7201	70 500 10
Copper	(Total)	Copper	6010 7210 7211	60 200 10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethyl-idene) bis[4-chloro-	8080 8270	0.1 10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
4,4 <sup>1</sup> -DDE	72-55-9	Benzene, 1,1 <sup>1</sup> - (dichloroethenyl-idene) bis[4- chloro-	8080 8270	0.05 10
4,4 <sup>1</sup> -DDT	50-29-3	Benzene, 1,1 <sup>1</sup> -(2,2,2- trichloroethylidene)bis[4- chloro-	8080 8270	0.1 10
Diallate	2303-16-4	Carbamothioic acid, bis(1- methyl-ethyl)-, S-(2,3- dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100 8270	200 10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010 8021 8260	1 0.3 5
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3- chloro-	8011 8021 8260	0.1 30 25
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011 8021 8260	0.1 10 5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060 8270	5 10
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.5 10 5 10
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-	8010 8020 8021 8120 8260 8270	5 5 0.2 10 5 10
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.1 15 5 10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
3,3 <sup>1</sup> -Dichlorobenzidine	91-94-1	[1,1 <sup>1</sup> -Biphenyl]-4,4 <sup>1</sup> -diamine, 3,3 <sup>1</sup> -dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8260	100
Dichlorodifluoromethane; CFC 12	75-71-8	Methane, dichlorodifluoro-	8021 8260	0.5 5
1,1-Dichloroethane; Ethylidene chloride	75-34-3	Ethane, 1,1-dichloro-	8010 8021 8260	1 0.5 5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	8010 8021 8260	0.5 0.3 5
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010 8021 8260	1 0.5 5
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021 8260	0.2 5
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010 8021 8260	1 0.5 5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040 8270	5 10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8010 8021 8260	0.5 0.05 5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8021 8260	0.3 5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8021 8260	0.5 15
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021 8260	0.2 5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010 8260	20 10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010 8260	5 10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexa, chloro-1a, 2,2a,3,6,6a,7,7a-octahydro-, (1α, 2β, 2α, 3β, 6β, 6α, 7β, 7α)-	8080 8270	0.05 10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060 8270	5 10
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	8141 8270	5 20
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S- [2-(methylamino)-2-oxoethyl] ester	8141 8270	3 20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3 <sup>1</sup> -Dimethylbenzidine	119-93-7	[1,1 <sup>1</sup> -Biphenyl]-4,4 <sup>1</sup> -diamine, 3,3 <sup>1</sup> -dimethyl-	8270	10
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040 8270	5 10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060 8270	5 10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040 8270	150 50
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040 8270	150 50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090 8270	0.2 10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090 8270	0.1 10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150 8270	1 20

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060 8270	30 10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	8140 8141 8270	2 0.5 10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	8080 8270	0.1 20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,(3α,5αα,6β,9β,9αα)-	8080 8270	0.05 20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octahydro-, (1α,2β, 2aβ,4β,3α,6α, 6aβ,7β,7αα)-	8080 8270	0.1 20
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene- 5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β, 2aβ,4β,4aβ,5β,6aβ, 6bβ,7R)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8221 8260	2 0.05 5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8260 8270	5 10 10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	20

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethyl-amino)sulfonyl]phenyl] 0,0-dimethyl ester	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100 8270	200 10
Fluorene	86-73-7	9H-Fluorene	8100 8270	200 10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7, 8,8- heptachloro-3a,4,7, 7a-tetrahydro-	8080 8270	0.05 10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7- heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1α,1β, 2α, 5α,5αβ, 6β, 6α)	8080 8270	1 10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120 8270	0.5 10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4, 4-hexachloro-	8021 8120 8260 8270	0.5 5 10 10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5- hexachloro-	8120 8270	5 10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120 8260 8270	0.5 10 10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3- hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100 8270	200 10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015 8240	50 100

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2, 3,4, 10,10- hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270 8260	20 10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1, 1a,3,3a,4,5,5, 5a,5b,6-decachlorooctahydro-	8270	20
Lead	(Total)	Lead	6010 7420 7421	400 1000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015 8260	5 100
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N <sup>1</sup> -2-pyridinyl-N <sup>1</sup> / <sub>2</sub> -thienylmethyl)-	8270	100
Methoxychlor	72-43-5	Benzene, 1,1 <sup>1</sup> -(2,2,2, trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8021	20 10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8021	1 0.3
3-Methylcholanthrene	56-49-5	Benz[ <i>j</i> ]aceanthrylene, 1,2-dihydro- 3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015 8260	10 100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010 8260	40 10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015 8260	2 30

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	8140 8141 8270	0.5 1 10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015 8260	5 100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8021 8260	15 20 10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8021 8260	5 0.2 10
Naphthalene	91-20-3	Naphthalene	8021 8100 8260 8270	0.5 200 5 10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010 7520	150 400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090 8270	40 10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040 8270	5 10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040 8270	10 50

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine propyl-	621-64-7	1-Propanamine, N-nitroso-N-	8070	10
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	8141 8270	0.5 10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040 8270	5 50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100 8270	200 10
Phenol	108-95-2	Phenol	8040	1
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl]ester	8140 8141 8270	2 0.5 10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1[prime]-Biphenyl, chloroderivatives	8080 8270	50 200
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N- (1,1- dimethyl-2-propynyl)-	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015 8260	60 150
Pyrene	129-00-0	Pyrene	8100 8270	200 10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2- propenyl)-	8270	10
Selenium	(Total)	Selenium	6010 7740 7741	750 20 20
Silver	(Total)	Silver	6010 7760 7761	70 100 10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020 8021 8260	1 0.1 10
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5- Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5- trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010 8021 8260	5 0.05 5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010 8021 8260	0.5 0.1 5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010 8021 8260	0.5 0.5 5

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Total)	Thallium	6010 7840 7841	400 1000 10
Tin	(Total)	Tin	6010	40
Toluene	108-88-3	Benzene, methyl-	8020 8021 8260	2 0.1 5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	See Note 10	Toxaphene	8080	2
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021 8120 8260 8270	0.3 0.5 10 10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8010 8021 8260	0.3 0.3 5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010 8260	0.2 5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010 8021 8260	1 0.2 5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010 8021 8260	10 0.3 5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040 8270	5 10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010 8021 8260	10 5 15
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts index name <sup>4</sup>	Suggested Method <sup>5</sup>	PQL (µg/L) <sup>6</sup>
Vanadium	(Total)	Vanadium	6010 7910 7911	80 2000 40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010 8021 8260	2 0.4 10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020 8021 8260	5 0.2 5
Zinc	(Total)	Zinc	6010 7950 7951	20 50 0.5

## Notes:

<sup>1</sup>The regulatory requirements pertain only to the list of substances; the right-hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

<sup>2</sup>Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

<sup>3</sup>Chemical Abstracts Service registry number. Where “Total” is entered, all species in the groundwater that contain this element are included.

<sup>4</sup>CAS index names are those used in the 9th Collective Index.

<sup>5</sup>Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 “Test Methods for Evaluating Solid Waste,” third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

<sup>6</sup>Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in groundwaters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

<sup>7</sup>This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2[sec]-oxybis[2-chloro- (CAS RN 39638-32-9).

<sup>8</sup>Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.

<sup>9</sup>Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

<sup>10</sup>Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

<sup>11</sup>Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 µg/L for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

These rules are intended to implement Iowa Code section 455B.304.

[Filed 11/21/02, Notice 9/18/02—published 12/11/02, effective 1/15/03]

[Filed 6/14/07, Notice 12/6/06—published 7/4/07, effective 10/1/07]<sup>1</sup>

[Filed 12/10/08, Notice 6/4/08—published 12/31/08, effective 2/4/09]

[Editorial change: IAC Supplement 2/25/09]

[Filed ARC 2692C (Notice ARC 2539C, IAB 5/25/16), IAB 8/31/16, effective 10/5/16]

<sup>1</sup> Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007.

## OBJECTION

At its February 6, 2009 meeting the Administrative Rules Review Committee voted to object to the provisions of ARC 7474B relating to the closure of existing landfills. This filing appears in IAB Vol. XXXI, No. 14 (12-31-2008). The committee takes this action pursuant to the authority of §17A.4(5).

This rulemaking attempted to resolve issues raised by a Committee objection imposed in December, 2007. Although the Commission has made a serious effort to resolve the issues surrounding the 2007 rulemaking, the Committee believes the main underlying issue in the 2007 objection remains: that ARC 7474B is unreasonable because projects that were designed and constructed in accordance with rules in effect at the time of construction cannot be required to be redesigned or reconstructed due to subsequent rule changes unless the department finds that such facilities are causing pollution. That principle was set out in a “grandfather” clause which first appeared in an earlier rule and while it remains in place it has been restricted in the current filing. This filing continues to impose new requirements on facilities properly designed, constructed and permitted under the earlier rules. The committee believes the right conferred in the earlier rule cannot be extinguished or conditioned.

Objection filed February 10, 2009

TITLE VI  
PARKS AND RECREATION AREAS  
CHAPTER 61  
STATE PARKS, RECREATION AREAS, AND STATE FOREST CAMPING  
[Prior to 12/31/86, Conservation Commission[290] Ch 45]

**571—61.1(461A) Applicability.** This chapter is applicable to all state-owned parks and recreation areas managed by the department and by political subdivisions unless otherwise noted. This chapter also governs camping activity in the following state forests:

1. Shimek State Forest in Lee and Van Buren Counties.
2. Stephens State Forest in Appanoose, Clarke, Davis, Lucas and Monroe Counties.
3. Yellow River State Forest in Allamakee County.

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.2(461A) Definitions.**

“*Bank*” or “*shoreline*” means the zone of contact of a body of water with the land and an area within 25 feet of the water’s edge.

“*Basic unit*” or “*basic camping unit*” means the portable shelter used by one to six persons.

“*Beach*” is as defined in rule 571—64.1(461A).

“*Beach house open shelter*” means a building located on the beach which is open on two or more sides and which may or may not have a fireplace.

“*Cabin*” means a small, one-story dwelling of simple construction which is available for rental on a daily or weekly basis.

“*Call center*” means a phone center where operators process all telephone reservations, reservation changes and reservation cancellations for camping and rental facilities.

“*Camping*” means the erecting of a tent or shelter of natural or synthetic material or placing a sleeping bag or other bedding material on the ground or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

“*Centralized reservation system*” means a system that processes reservations using more than one method to accept reservations. Each method simultaneously communicates to a centralized database at a reservation contractor location to ensure that no campsite or rental facility is booked more than once.

“*Chaperoned, organized youth group*” means a group of persons 17 years of age and under, which is sponsored by and accompanied by adult representatives of a formal organization including, but not limited to, the Boy Scouts of America or Girl Scouts of America, a church, or Young Men’s or Young Women’s Christian Association. “Chaperoned, organized youth group” does not include families of members of a formal organization.

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Fishing*” means taking or attempting to take fish by utilizing hook, line and bait as described in Iowa Code section 481A.72, or use of permitted devices for taking rough fish as determined by Iowa Code sections 461A.42 and 481A.76.

“*Free climbing*” means climbing with the use of hands and feet only and without the use of ropes, pins and other devices normally associated with rappelling and rock climbing.

“*Group camp*” means those camping areas at Dolliver Memorial State Park and Lake Keomah State Park where organized groups (i.e., family groups or youth groups) may camp. Dining hall facilities are available.

“*Immediate family*” means spouses, parents or legal guardians, domestic partners, dependent children and grandparents.

“*Lodge*” means a day-use building which is enclosed on all four sides and may have kitchen facilities such as a stove or refrigerator and which is available for rent on a daily basis. “Lodge” does not include buildings that are open on two or more sides and that contain fireplaces only.

“*Modern area*” means a camping area which has showers and flush toilets.

“*Nonmodern area*” means a camping area in which no showers are provided and which contains only pit-type latrines or flush-type toilets. Potable water may or may not be available to campers.

“*Open shelter*” means a building which is open on two or more sides and which may or may not include a fireplace.

“*Open shelter with kitchenette*” means a building which is open on two or more sides and contains a lockable, enclosed kitchen area.

“*Organized youth group campsite*” means a designated camping area within or next to the main campground where chaperoned, organized youth groups may camp.

“*Persons with disabilities parking permit*” means an identification device bearing the international symbol of accessibility that is issued by the Iowa department of transportation or similar devices that are issued by other states. The device can be a hanging device or on a motor vehicle as a plate or sticker as provided in Iowa Code section 321L.2 or 321L.9.

“*Person with physical disability*” means any of the following: an individual, commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a single or double amputee of the legs; or a person with any other physical affliction which makes it impossible to ambulate successfully in park or recreation area natural surroundings without the use of a wheeled conveyance.

“*Possession*” means exercising dominion or control with or without ownership over property.

“*Prohibited activity*” means any activity other than fishing as defined in this chapter including, but not limited to, picnicking and camping.

“*Property*” means personal property such as goods, money, or domestic animals.

“*Recreation areas*” means the following areas that have been designated by action of the commission:

<u>Area</u>	<u>County</u>
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Claire Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as in 571—Chapters 52 and 105.

“*Refuse*” means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid or solid waste or other discarded material.

“*Rental facilities*” means those facilities that may be rented on a daily or nightly basis and includes open shelters, open shelters with kitchenettes, beach house open shelters, warming lodges, lodges, cabins, yurts and group camps.

“*Reservation transaction fees*” means fees as given in this chapter to process a reservation, change a reservation or cancel a reservation.

“*Reservation window*” means a rolling period of time in which a person may reserve a campsite or rental facility.

“*Scuba diving*” means swimming with the aid of self-contained underwater breathing apparatus.

“*State park*” means the following areas managed by the state and designated by action of the commission:

<u>Area</u>	<u>County</u>
A. A. Call	Kossuth
Backbone	Delaware
Banner Lakes at Summerset	Warren
Beed’s Lake	Franklin
Bellevue	Jackson
Big Creek	Polk
Black Hawk	Sac
Cedar Rock	Buchanan
Clear Lake	Cerro Gordo
Dolliver Memorial	Webster
Elinor Bedell	Dickinson
Elk Rock	Marion
Fort Atkinson	Winneshiek
Fort Defiance	Emmet
Geode	Henry and Des Moines
George Wyth	Black Hawk
Green Valley	Union
Gull Point	Dickinson
Honey Creek	Appanoose
Lacey-Keosauqua	Van Buren
Lake Ahquabi	Warren
Lake Anita	Cass
Lake Darling	Washington
Lake Keomah	Mahaska
Lake Macbride	Johnson
Lake Manawa	Pottawattamie
Lake of Three Fires	Taylor
Lake Wapello	Davis
Ledges	Boone
Lewis and Clark	Monona
Maquoketa Caves	Jackson
McIntosh Woods	Cerro Gordo
Mini-Wakan	Dickinson
Nine Eagles	Decatur
Okamanpedan	Emmet
Palisades-Kepler	Linn
Pikes Peak	Clayton
Pikes Point	Dickinson
Pilot Knob	Winnebago
Pine Lake	Hardin
Prairie Rose	Shelby
Preparation Canyon	Monona

<u>Area</u>	<u>County</u>
Red Haw	Lucas
Rice Lake	Winnebago
Rock Creek	Jasper
Shimek Forest Campground	Lee
Springbrook	Guthrie
Stephens Forest Campground	Lucas
Stone	Plymouth and Woodbury
Trapper's Bay	Dickinson
Twin Lakes	Calhoun
Union Grove	Tama
Viking Lake	Montgomery
Walnut Woods	Polk
Wapsipinicon	Jones
Waubonsie	Fremont
Wildcat Den	Muscatine
Yellow River Forest Campground	Allamakee

Use and management of these areas are governed by Iowa Code chapter 461A and by other restrictions prescribed on area signs pursuant to Iowa Code section 461A.44.

*"State park managed by a management company"* means the following area established by Iowa Code chapter 463C:

<u>Area</u>	<u>County</u>
Honey Creek Resort State Park	Appanoose

Use and management of this area are governed by rules established in this chapter, as well as by the indenture of trust entered into by and among the department, the treasurer of state, the Honey Creek Premiere Destination Park bond authority as established by Iowa Code chapter 463C, and Banker's Trust Corporation, dated October 1, 2006.

*"State park managed by another governmental entity"* means the following areas designated by action of the commission:

<u>Area</u>	<u>County</u>
Bobwhite	Wayne
Browns Lake-Bigelow Park	Woodbury
Cold Springs	Cass
Crystal Lake	Hancock
Eagle Lake	Hancock
Echo Valley	Fayette
Frank A. Gotch	Humboldt
Galland School	Lee
Heery Woods	Butler
Kearny	Palo Alto
Lake Cornelia	Wright
Lake Odessa Campground	Louisa
Margo Frankel Woods	Polk
Oak Grove	Sioux

<u>Area</u>	<u>County</u>
Pammel	Madison
Pioneer	Mitchell
Sharon Bluffs	Appanoose
Silver Lake	Delaware
Spring Lake	Greene
Swan Lake	Carroll

Use and management of these areas are governed by Iowa Code chapter 461A, by this chapter, and by rules adopted by the managing entity.

“*State preserve*” means the following areas or portion of the areas dedicated by actions pursuant to Iowa Code section 465C.10:

<u>Area</u>	<u>County</u>
A. F. Miller	Bremer
Ames High Prairie	Story
Anderson Prairie	Emmet
Behrens Ponds and Woodland	Linn
Berry Woods	Warren
Bird Hill	Cerro Gordo
Bixby	Clayton
Bluffton Fir Stand	Winneshiek
Brush Creek Canyon	Fayette
Brushy Creek	Webster
Cameron Woods	Scott
Casey’s Paha	Tama
Catfish Creek	Dubuque
Cayler Prairie	Dickinson
Cedar Bluffs Natural Area	Mahaska
Cedar Hills Sand Prairie	Black Hawk
Cheever Lake	Emmet
Clay Prairie	Butler
Claybanks Forest	Cerro Gordo
Coldwater Cave	Winneshiek
Crossman Prairie	Howard
Decorah Ice Cave	Winneshiek
Derald Dinesen Prairie	Shelby
Doolittle Prairie	Story
Eureka Woods	Greene
Fallen Rock	Hardin
Fish Farm Mounds	Allamakee
Five Ridge Prairie	Plymouth
Fleming Woods	Poweshiek
Fort Atkinson	Winneshiek
Fossil and Prairie Park	Floyd
Freda Haffner Kettlehole	Dickinson
Gitchie Manitou	Lyon

<u>Area</u>	<u>County</u>
Glenwood	Mills
Hanging Bog	Linn
Hardin City Woodland	Hardin
Hartley Fort	Allamakee
Hartman Bluff	Black Hawk
Hayden Prairie	Howard
Hoffman Prairie	Cerro Gordo
Indian Bluffs Primitive Area	Jones
Indian Fish Trap	Iowa
Kalsow Prairie	Pocahontas
Kish-Ke-Kosh Prairie	Jasper
Lamson Woods	Jefferson
Liska-Stanek Prairie	Webster
Little Maquoketa River Mounds	Dubuque
Malanaphy Springs	Winneshiek
Malchow Mounds	Des Moines
Manikowski Prairie	Clinton
Mann Wilderness Area	Hardin
Marietta Sand Prairie	Marshall
Mericle Woods	Tama
Merrill A. Stainbrook	Johnson
Merritt Forest	Clayton
Montauk	Fayette
Mossy Glen	Clayton
Mount Pisgah Cemetery	Union
Mount Talbot	Woodbury and Plymouth
Nestor Stiles Prairie	Cherokee
Ocheyedan Mound	Osceola
Old State Quarry	Johnson
Palisades-Dows	Linn
Pecan Grove	Muscatine
Pellett Memorial Woods	Cass
Perkins Prairie	Greene
Pilot Grove	Iowa
Pilot Knob	Hancock
Retz Memorial Woods	Clayton
Roberts Creek	Clayton
Rock Creek Island	Cedar
Rock Island Botanical	Linn
Roggman Boreal Slopes	Clayton
Rolling Thunder Prairie	Warren
Savage Woods	Henry
Searryl's Cave	Jones
Sheeder Prairie	Guthrie

<u>Area</u>	<u>County</u>
Silver Lake Fen	Dickinson
Silvers-Smith Woods	Dallas
Slinde Mounds	Allamakee
St. James Lutheran Church	Winneshiek
Starr's Cave	Des Moines
Steele Prairie	Cherokee
Stinson Prairie	Kossuth
Strasser Woods	Polk
Sylvan Runkel	Monona
Toolesboro Mounds	Louisa
Turin Loess Hills	Monona
Turkey River Mounds	Clayton
Vincent Bluff	Pottawattamie
White Pine Hollow	Dubuque
Williams Prairie	Johnson
Wittrock Indian Village	O'Brien
Woodland Mounds	Warren
Woodman Hollow	Webster
Woodthrush Woods	Jefferson

Use and management of these areas are governed by rules established in this chapter as well as by management plans adopted by the preserves advisory board.

“Swim” or “swimming” means to propel oneself in water by natural means, such as movement of limbs, and includes but is not limited to wading and the use of inner tubes or beach toy-type swimming aids.

“Walk-in camper” means a person arriving at a campground without a reservation and wishing to occupy a first-come, first-served campsite or unrented, reservable campsite.

“Yurt” means a one-room circular fabric structure built on a platform which is available for rental on a daily or weekly basis.

[ARC 8821B, IAB 6/2/10, effective 7/7/10; ARC 9541B, IAB 6/1/11, effective 7/6/11; ARC 0383C, IAB 10/3/12, effective 11/7/12]

DIVISION I  
STATE PARKS AND RECREATION AREAS

**571—61.3(461A) Centralized reservation system—operating procedures and policies.** The centralized reservation system of the department accepts and processes reservations for camping and rental facilities in state parks, recreation areas and state forest campgrounds.

**61.3(1) Recreation facilities available on centralized reservation system.**

*a. Rental facilities.* All rental facilities are available on the centralized reservation system with the exception of the conservation education center rental at Springbrook State Park.

*b. Campgrounds.*

(1) All campgrounds are available on the centralized reservation system except for the campgrounds at A. A. Call State Park, Fort Defiance State Park and Preparation Canyon State Park and the backpack campsites located in state forests.

(2) No less than 50 percent and up to no more than 75 percent of the total number of campsites in each individual campground shall be designated as reservable sites on the reservation system. The determination of which campsites shall be included in the reservable designation shall be the responsibility of the park staff in each park. Park staff shall include a combination of electric, nonelectric and sewer/water sites while taking into consideration campsite characteristics such as

location, shade and size. The department will review the percentage of reservable sites and usage on a biennial basis and determine whether the percentage of reservable campsites should be changed. A reservable campsite will be identified with a reservable-site marker on the campsite post.

(3) All designated organized youth group campsites and campsites marked with the international symbol of accessibility are included in the reservation system.

(4) Reservations will not be accepted for camping stays that occur November 1 through March 31.

**61.3(2) *Methods available to make reservations.*** Persons may make reservations by telephone through the call center or through the Internet by using the reservation system Web site.

**61.3(3) *Reservation transaction fees.***

*a. Reservation fee.* A nonrefundable reservation fee shall be charged for each reservation made per campsite or rental facility regardless of the length of stay. The one-time fee is per reservation and is not charged per day or per night. This fee is in addition to the camping fees or rental fees established in subrules 61.4(1) and 61.5(1). The reservation fees, which differ based upon the method used when the reservation is made, are as follows:

(1) Internet reservation — \$4.

(2) Telephone reservation — \$6.

*b. Change fee.* The following fees shall be charged to change an existing reservation:

(1) Reservation change made through the Internet — \$5.

(2) Reservation change made over the telephone — \$7.

*c. Cancellation fee.* The following fees shall be charged to cancel a reservation:

(1) Reservation cancellation made through the Internet — \$5.

(2) Reservation cancellation made over the telephone — \$7.

**61.3(4) *Reservation window.***

*a. Camping.* Camping reservations may be made up to 3 months before arrival but no later than 21 days before arrival if payment is made by paper check or money order and no later than 2 days before arrival if payment is made by credit card or debit card.

*b. Rental facilities.*

(1) Rentals for May 1 to September 30. Rental facility reservations may be made up to 12 months before arrival but not later than 21 days before arrival if payment is made by paper check or money order and no later than 4 days before arrival if payment is made by credit card or debit card.

(2) Rentals for October 1 to April 30. Rental facility reservations may be made up to 12 months before arrival but not later than 21 days before arrival if payment is made by paper check or money order and no later than 7 days before arrival if payment is made by credit card or debit card.

**61.3(5) *Site-specific reservations.*** All reservations shall be for a specific campsite, cabin, lodge or open shelter.

**61.3(6) *Changing a reservation.*** Changes to reservations shall not be made until the initial reservation has been paid in full.

*a. Camping.*

(1) The last day a person may make a change to a camping reservation is 4 days prior to the scheduled arrival date if payment is made by credit card or debit card or 21 days prior to the scheduled arrival date if payment is made by paper check or money order.

(2) Equestrian campers may make changes to a camping reservation less than 4 days prior to the arrival date if the equestrian trails are closed on the same day as the equestrian campers' scheduled arrival date or on the day before their scheduled arrival date.

*b. Rental facilities.* The last day a person may make a change to a rental facility reservation is 15 days prior to the scheduled arrival date if payment is made by credit card or debit card or 21 days prior to the scheduled arrival date if payment is made by paper check or money order.

**61.3(7) *Canceling a reservation.*** Persons who cancel their reservations prior to or on the scheduled arrival date shall receive a refund as follows:

*a. Camping.*

(1) Persons who cancel their reservations two or more days prior to the scheduled arrival date will receive a refund of all camping fees paid less the cancellation fee.

(2) Persons who cancel their reservations one day prior to the scheduled arrival date will receive a refund of all camping fees paid less the cancellation fee and forfeiture of one night’s camping fee.

(3) Persons who cancel their reservations on the scheduled day of arrival will receive a refund of all camping fees paid less the cancellation fee and forfeiture of two nights’ camping fees.

*b. Cabins.*

(1) Persons who cancel their reservations 30 or more days prior to the scheduled arrival date will receive a refund of all rental fees and tax paid less the cancellation fee.

(2) Persons who cancel their reservations 15 to 29 days prior to the scheduled arrival date will receive a refund of all rental fees and tax paid less the cancellation fee and forfeiture of one night’s rental fee and tax.

(3) Persons who cancel their reservations less than 15 days prior to the scheduled arrival date or on the scheduled arrival date will receive a refund of all rental fees and tax paid less the cancellation fee and forfeiture of two nights’ rental fees and tax.

*c. Lodges, open shelters, open shelters with kitchenettes, and beach house open shelters.*

(1) Persons who cancel their reservations 30 or more days prior to the scheduled arrival date will receive a refund of all rental fees and tax paid less the cancellation fee.

(2) Persons who cancel their reservations 15 to 29 days prior to the scheduled arrival date will receive a refund of all rental fees and tax paid less the cancellation fee and forfeiture of one day’s rental fee and tax.

(3) Persons who cancel their reservations less than 15 days prior to the scheduled arrival date or on the scheduled arrival date will receive a refund of all rental fees and tax paid less the cancellation fee and forfeiture of two days’ rental fees and tax, if applicable.

*d. Cancellation after scheduled arrival date.* Persons who cancel any reservation after the scheduled arrival date will receive no refund unless extenuating circumstances have been documented, reviewed, and approved in writing by the department.

*e. Cancellation fees exceeding camping or rental fees.* When the cancellation fee and forfeiture of camping fees or rental fees and tax exceed the total amount of camping fees or rental fees and tax paid, no refund will be issued.

[ARC 9324B, IAB 1/12/11, effective 2/16/11; ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.4(461A) Camping.**

**61.4(1) Fees.** The following are maximum per-night fees for camping in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event. In areas subject to a local option sales tax, the camping fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

	<u>Fee</u>	<u>Sales Tax</u>	<u>Total Per Night</u>
<i>a. The following fees shall be in effect from May 1 to September 30 each year.</i>			
Nonmodern	\$ 8.49	.51	\$ 9.00
Modern	10.38	.62	11.00
<i>b. The following fees shall be in effect from October 1 to April 30 each year.</i>			
Nonmodern	5.66	.34	6.00
Modern	7.55	.45	8.00

	<u>Fee</u>	<u>Sales Tax</u>	<u>Total Per Night</u>
c. Electricity	4.72	.28	5.00
This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not).			
d. Organized youth group campsite, per group	14.15	.85	15.00
e. Cable television hookup	1.89	.11	2.00
f. Sewer and water hookup	2.83	.17	3.00
g. Additional fee for campgrounds designated for equestrian use	2.83	.17	3.00
This fee is in addition to applicable fees listed above.			
h. Camping tickets (per book of seven)	85.85	5.15	91.00

Camping tickets shall be valid for one year from the month of purchase. Persons using valid camping tickets purchased prior to any fee increase will not be required to pay the difference due to that fee increase.

**61.4(2) Varying fees.** Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

**61.4(3) Procedures for camping registration.**

a. *Registration.*

(1) Registration of walk-in campers occupying nonreservable campsites or unrented, reservable campsites will be on a first-come, first-served basis and will be handled by a self-registration process. Registration forms will be provided by the department. Campers shall, within one-half hour of arrival at the campground, complete the registration form, place the appropriate fee or number of camping tickets in the envelope and place the envelope in the depository provided by the department. One copy of the registration form must then be placed in the campsite holder provided at the campsite. The camping length of stay identified on the camping registration form must begin with the actual date the camper registers, pays and posts the registration at the campsite.

(2) Park staff shall complete the registration of campers with reservations and place the registration in the campsite holder no later than one hour prior to check-in time on the day of the camper's arrival.

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of 61.4(3) "a" have been met.

c. Campsite registration must be in the name of a person 18 years of age or older who will occupy the camping unit on that site for the full term of the registration.

d. Each camping ticket shall cover the cost of one night of camping in a modern area on a site where electricity is furnished. In addition to using the camping ticket, persons camping on equestrian sites or on sites which also have sewer and water hookups or cable television hookups available must pay the additional charges for these services. Use of a camping ticket in an area or on a site which would require a lesser fee than an electrical site in a modern area will not entitle the user to a refund or credit of any kind.

**61.4(4) Organized youth group campsite registration.**

a. Registration procedures for organized youth group campsites shall be governed by paragraphs "a," "b" and "c" of 61.4(3).

b. Chaperoned, organized youth groups may choose to occupy campsites not designated as organized youth group campsites. However, the group is subject to all fees and rules in 61.4(1), 61.4(3) and 61.4(5) pertaining to the campsite the group wishes to occupy.

**61.4(5) Restrictions on campsite/campground use.** This subrule sets forth conditions of public use which apply to all state parks and recreation areas. Specific areas as listed in 61.4(6), 571—61.7(461A) and 571—61.10(461A) are subject to additional restrictions or exceptions. The conditions in this subrule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

*a.* Camping is restricted to designated camping areas within state parks and recreation areas and state forest campgrounds.

*b.* No more than six persons shall occupy a campsite except for the following:

(1) Families that exceed six persons may be allowed on one campsite if all members are immediate family and cannot logically be split to occupy two campsites.

(2) Campsites which are designated as chaperoned, organized youth group campsites.

*c.* Camping is restricted to one basic unit per site except that a small tent may be placed on a site with the basic unit. The area occupied by the small tent shall be no more than 8 feet by 10 feet and the tent shall hold no more than four people.

*d.* Each camping group shall utilize only the electrical outlet fixture designated for its particular campsite. No extension cords or other means of hookup shall be used to furnish electricity from one designated campsite to another.

*e.* Each camping group will be permitted to park one motor vehicle not being used for camping purposes at the campsite. Unless otherwise posted, one additional vehicle may be parked at the campsite.

*f.* All motor vehicles, excluding motorcycles, not covered by the provision in 61.4(5) "e" shall be parked in designated extra-vehicle parking areas.

*g.* Walk-in campers occupying nonreservable campsites or unrented, reservable campsites shall register as provided in subrule 61.4(3) within one-half hour of entering the campground.

*h.* Campers occupying nonreservable campsites shall vacate the campground or register for the night prior to 4 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights for nonreservable campsites. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

*i.* Walk-in campers shall not occupy unrented, reservable campsites until 10 a.m. on the first camping day of their stay. Campers shall vacate the campground by 3 p.m. of the last day of their stay. Initial registration shall not exceed 2 nights. Campers may continue to register after the first 2 nights on a night-to-night basis up to a maximum of 14 consecutive nights, subject to campsite availability. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

*j.* Campers with reservations shall not occupy a campsite before 4 p.m. of the first day of their stay. Campers shall vacate the site by 3 p.m. of the last day of their stay. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

*k.* Minimum stay requirements for camping reservations. From May 1 to September 30, a two-night minimum stay is required for weekends. The two nights shall be designated as Friday and Saturday nights. However, if September 30 is a Friday, the Friday and Saturday night stay shall not apply. If September 30 is a Saturday, the Friday and Saturday night stay shall apply. The following additional exceptions apply:

(1) A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

(2) A Thursday, Friday, and Saturday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Thursday, Friday or Saturday.

(3) A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Monday.

*l.* Buddy campsite reservations. Buddy campsites are between two to four individual sites that are grouped together and can only be reserved and used collectively. Campers reserving buddy campsites through the centralized reservation system must reserve both or all four of the individual sites that make up the group buddy campsite or buddy campsite.

*m.* Campsites marked with the international symbol of accessibility shall be used only by vehicles displaying a persons with disabilities parking permit. The vehicle must be in use by a person with a disability, either as an operator or a passenger.

*n.* In designated campgrounds, equine animals and llamas must be stabled at a hitching rail, individual stall or corral if provided. Equine animals and llamas may be hitched to trailers for short periods of time to allow for grooming and saddling. These animals may be stabled inside trailers if no hitching facilities are provided. Portable stalls/pens and electric fences are not permitted.

**61.4(6) Area-specific restrictions on campground use.** In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to specific areas listed as follows:

*a. Brushy Creek Recreation Area, Webster County.*

(1) In the designated equestrian campgrounds, the maximum number of equine animals to be tied to the hitching rails is six. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or register and pay for an additional campsite if available.

(2) In the designated equestrian campgrounds, equine animals may be tied to trailers for short periods of time to allow grooming or saddling; however, the tying of equine animals to the exterior of trailers for extended periods of time or for stabling is not permitted.

*b. Recreation area campgrounds.* Access into and out of designated campgrounds shall be permitted from 4 a.m. to 10:30 p.m. From 10:30 p.m. to 4 a.m., only registered campers are permitted in and out of the campgrounds.

*c. Lake Manawa State Park, Pottawattamie County.* Except for the following limitations on campground length of stay, campsite use restrictions as stated in 61.4(5) shall apply to Lake Manawa. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Lake Manawa campground for more than 14 nights in any 30-day period.

*d. Walnut Woods State Park, Polk County.* Except for the following limitations on campground length of stay, campsite use restrictions as stated in 61.4(5) shall apply to Walnut Woods. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Walnut Woods campground for more than 14 nights in any 30-day period.

**61.4(7) Campground fishing.** Rule 571—61.11(461A) is not intended to prohibit fishing by registered campers who fish from the shoreline within the camping area.

[ARC 7684B, IAB 4/8/09, effective 5/13/09; ARC 8821B, IAB 6/2/10, effective 7/7/10; ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.5(461A) Rental facilities.** The following are maximum fees for facility use in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event.

**61.5(1) Fees.**

*a.* Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

	<u>Per Night*</u>	<u>Per Week</u>
Backbone State Park, Delaware County		
Renovated modern cabins	\$ 50	\$300
Two-bedroom modern cabins	85	510
Deluxe cabins	100	600

	<u>Per Night*</u>	<u>Per Week</u>
Black Hawk State Park, Sac County	100	600
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
Honey Creek State Park, Appanoose County	35	210
Lacey-Keosauqua State Park, Van Buren County	50	300
Lake Darling State Park, Washington County		
Camping cabins	35	210
Two-bedroom cabins	85	510
Lake of Three Fires State Park, Taylor County	50	300
Lake Wapello State Park, Davis County (Cabin Nos. 1-12)	60	360
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510
Lake Wapello State Park, Davis County (Cabin No. 14)	75	450
Nine Eagles State Park, Decatur County	75	450
Palisades-Kepler State Park, Linn County	50	300
Pine Lake State Park, Hardin County		
Studio cabins (four-person occupancy limit)	65	390
One-bedroom cabins	75	450
Pleasant Creek State Recreation Area, Linn County	35	210
Prairie Rose State Park, Shelby County	35	210
Springbrook State Park, Guthrie County	200	1200
Stone State Park, Woodbury County	35	210
Union Grove State Park, Tama County	75	450
Waubonsie State Park, Fremont County		
Two-bedroom modern cabins	85	510
One-bedroom modern cabins	60	360
Two-bedroom camping cabins	50	300
One-bedroom camping cabins	35	210
Camping cabin	25	150

\*Minimum two nights

b. Yurt rental. This fee does not include tax. Tax will be calculated at time of payment.

	<u>Per Night*</u>	<u>Per Week</u>
McIntosh Woods State Park, Cerro Gordo County	\$ 35	\$210

\*Minimum two nights

c. Lodge rental per reservation. This fee does not include tax. Tax will be calculated at time of payment.

	<u>Per Weekday</u> <u>M-Th***</u>	<u>Per Weekend Day</u> <u>Fr-Su</u>
A. A. Call State Park, Kossuth County	\$ 40	\$ 80
Backbone State Park Auditorium, Delaware County**	25	50
Backbone State Park, Delaware County	62.50	125
Beed's Lake State Park, Franklin County	40	80
Bellevue State Park-Nelson Unit, Jackson County	50	100
Clear Lake State Park, Cerro Gordo County	50	100

	<u>Per Weekday</u> <u>M-Th***</u>	<u>Per Weekend Day</u> <u>Fr-Su</u>
Dolliver Memorial State Park, Webster County		
Central Lodge**	30	60
South Lodge	37.50	75
Ft. Defiance State Park, Emmet County	35	70
George Wyth State Park, Black Hawk County**	35	70
Gull Point State Park, Dickinson County	100	200
Lacey-Keosauqua State Park, Van Buren County		
Beach Lodge	35	70
Lodge	35	70
Lake Ahquabi State Park, Warren County	45	90
Lake Darling State Park, Washington County	100	200
Lake Keomah State Park, Mahaska County	45	90
Lake Macbride State Park, Johnson County		
Beach Lodge	35	70
Lodge	35	70
Lake of Three Fires State Park, Taylor County	35	70
Lake Wapello State Park, Davis County	30	60
Lewis and Clark State Park, Monona County		
Lodge	35	70
Visitor Center Banquet Room	75	150
Mini-Wakan State Park, Dickinson County	75	150
Palisades-Kepler State Park, Linn County	87.50	175
Pine Lake State Park, Hardin County	40	80
Pleasant Creek Recreation Area, Linn County**	37.50	75
Stone State Park, Woodbury/Plymouth Counties	62.50	125
Viking Lake State Park, Montgomery County	30	60
Walnut Woods State Park, Polk County	100	200
Wapsipinicon State Park, Jones County		
Rotary Lodge	35	70
Boy Scout Lodge	20	40
Waubonsie State Park, Fremont County	75	150

\*\*Does not contain kitchen facilities

\*\*\*The weekend day fee applies to New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, even though the holiday may fall on a weekday.

d. Open shelter rental. This fee does not include tax. Tax will be calculated at time of final payment.

	<u>Per Day</u>
Open shelter	\$25
Large open shelter	\$75
Big Creek State Park, Polk County (Beach Nos. 1-3)	
Brushy Creek State Recreation Area, Webster County (Lakeview Shelter)	
Lake Darling State Park, Washington County (Cottonwood Shelter)	
Open shelter with kitchen	\$75

	<u>Per Day</u>
Beach house open shelter	\$40
Lake Ahquabi State Park, Warren County	
Lake Wapello State Park, Davis County	
Pine Lake State Park, Hardin County	
Springbrook State Park, Guthrie County	
Beach cabana-style open shelter	\$15

*e.* Group camp rental. This fee does not include tax. Tax will be calculated at time of payment.

(1) Dolliver Memorial State Park, Webster County. Rental includes use of restroom/shower facility at Dolliver Memorial State Park.

1. Chaperoned, organized youth groups—\$2 per day per person with a minimum charge per day of \$60.

2. Other groups—\$15 per day per cabin plus \$30 per day for the kitchen and dining facility.

(2) Lake Keomah State Park, Mahaska County. All groups—\$40 per day for the dining/restroom facility plus the applicable camping fee. Lake Keomah dining/restroom facility day use only rental \$90.

*f.* Springbrook State Park conservation education center rental. The conservation education center may be rented as a group camp facility or as an educational group facility. All rentals shall be handled through staff at the education center.

(1) Linen service. Linen service includes bedding, pillows, towels and washcloths. The linen service fee stated below shall be charged. School groups are required to use the linen service. All other groups may elect to use the linen service.

(2) Concessionaire. All groups that utilize the classroom building and use education center staff for programs must use the concessionaire for all meals. All other groups may elect to use the kitchenette at the fee stated below or use the concessionaire or a combination of both.

(3) Classroom. All day use groups not utilizing the entire conservation education center facilities must pay the appropriate classroom or library fee. Overnight groups wishing to use the classroom facility for non-conservation education activities (such as quilters' meetings or family reunions) must pay the appropriate classroom fee.

(4) Reservations. School groups and department camps may reserve the center three years in advance. All other groups may reserve the center a year in advance on a first-come, first-served basis. There is no reservation fee. Fees shall be paid upon arrival at the center.

(5) Damage deposit. The damage deposit shall be paid on a separate instrument from the rental fee. School groups shall be exempt from this requirement.

(6) Day use attendance fee. A fee of \$5 per person per day plus applicable tax shall be charged to all day use groups and all persons associated with overnight groups attending day functions only when they utilize the entire conservation education center facilities and staff services.

(7) Overnight rental fees. These fees do not include tax. Tax will be calculated at time of payment.

1. Kindergarten through grade 12—\$5 per person per night.

2. Adults—\$15 per person per night.

3. Families—\$160 per dorm per night.

(8) Other services. These fees do not include tax. Tax will be calculated at time of payment.

1. Linen service—\$5 per person per night.

2. Family linen service—\$160 per dorm per night.

3. Kitchenette rental—\$30 per day or night.

4. Classroom rental—\$100 per day or night.

5. Library rental—\$50 per day or night.

6. Dining hall rental, day use only—\$100 per day.

7. Dining hall with kitchenette rental, day use only—\$130 per day.

(9) Damage deposit—\$50 per visit.

(10) Check-out times for dorms.

1. Monday-Saturday, 8 a.m.
2. Sunday, 9 a.m.
- g. Pilot Knob warming house reservation, \$30 plus applicable tax.

**61.5(2) *Varying fees.*** Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

**61.5(3) *Procedures for rental facility registration and rentals.***

a. Registrations for all rental facilities must be in the name of a person 18 years of age or older who will be present at the facility for the full term of the reservation.

b. Rental stay requirements for cabins and yurts.

(1) Except as provided in subparagraphs 61.5(3) "b"(2) and 61.5(3) "b"(3), cabin reservations must be for a minimum of one week (Friday p.m. to Friday a.m.) beginning the Friday of the national Memorial Day holiday weekend through Thursday after the national Labor Day holiday. From the Friday after the national Labor Day holiday through the Thursday before the national Memorial Day holiday weekend, cabins may be reserved for a minimum of two nights.

(2) The cabins at Dolliver Memorial State Park; the camping cabins at Pleasant Creek and Wilson Island State Recreation Areas and Green Valley, Honey Creek, Lake Darling and Stone State Parks; the yurts at McIntosh Woods State Park; and the group camps at Dolliver Memorial and Lake Keomah State Parks may be reserved for a minimum of two nights throughout the entire rental season.

(3) The multifamily cabin at Springbrook State Park may be reserved for a minimum of two nights throughout the entire rental season with the following exceptions:

1. A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

2. A Thursday, Friday, and Saturday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Thursday, Friday, or Saturday.

3. A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Monday.

(4) All unreserved cabins, yurts and group camps may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(5) Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

c. Persons renting cabins, yurts or group camp facilities must check in at or after 4 p.m. on Saturday. Check-out time is 11 a.m. or earlier on Saturday.

d. Persons renting facilities listed in subparagraph 61.5(3) "b"(2) must check in at or after 4 p.m. on the first day of the two-night rental period. Check-out time is 11 a.m. or earlier on the last day of the two-night rental period.

e. Except by arrangement for late arrival with the park staff, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not arrive. When arrangements for late arrival have been made, the person must appear prior to the park's closing time established by Iowa Code section 461A.46 or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park staff if next-day arrival is to be later than 9 a.m.

f. The number of persons occupying rental cabins is limited to six in cabins which contain one bedroom or less and eight in cabins with two bedrooms. Occupancy of the studio cabins at Pine Lake and all camping cabins is limited to four persons. Occupancy of the yurts is limited to four persons.

g. Except at parks or recreation areas with camping cabins or yurts, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. One small tent shall be allowed at each cabin or yurt in the designated areas and is subject to the occupancy requirements of 61.4(5) "b."

h. Open shelters and beach house open shelters which are not reserved are available on a first-come, first-served basis. If the open shelters with kitchenettes are not reserved, the open shelter portions of these facilities are available on a first-come, first-served basis.

*i.* Except by arrangement with the park staff in charge of the area, persons renting a lodge, shelter, or beach house open shelter facility and all guests shall vacate the facility by 10 p.m.

**61.5(4) Damage deposits for cabins, lodges, open shelters with kitchenettes, and yurts.**

*a.* Upon arrival for the rental facility period, renters shall pay in full a damage deposit in an amount equal to the weekend daily rental fee for the facility or \$50, whichever is greater. If a gathering with keg beer takes place in a lodge or open shelter with kitchenette, the damage deposit shall be waived in lieu of a keg damage deposit as specified in 571—subrule 63.5(3) if the keg damage deposit is greater than the lodge or open shelter with kitchenette damage deposit.

*b.* Damage deposits will be refunded only after authorized personnel inspect the rental facility to ensure that the facility and furnishings are in satisfactory condition.

*c.* If it is necessary for department personnel to clean up the facility or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by an amount equivalent to the applicable hourly wage of the employees for the time necessary to clean the area or repair the damage and by the cost of any repairs of furnishings.

*d.* The deposit is not to be construed as a limit of liability for damage to state property. The department may take legal action necessary to recover additional damages.

[ARC 7684B, IAB 4/8/09, effective 5/13/09; ARC 9186B, IAB 11/3/10, effective 12/8/10; ARC 0383C, IAB 10/3/12, effective 11/7/12; ARC 2052C, IAB 7/8/15, effective 9/15/15]

**571—61.6(461A) Vessel storage fees.** These fees do not include tax.

<u>Vessel Storage Space (wet or dry)</u>	<u>Maximum Fee</u>
Pontoon boats—eight months or less	\$150
Eight months or less (new docks)	200
Year-round	200
Year-round (new docks)	250
Other boats—eight months or less	125
Eight months or less (new docks)	150
Year-round	150
Year-round (new docks)	200

**571—61.7(461A) Restrictions—area and use.** This rule sets forth conditions of public use which apply to all state parks and recreation areas. Specific areas as listed in 61.4(6), 571—61.8(461A) and 571—61.11(461A) are subject to additional restrictions or exceptions. The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

**61.7(1) Animals.**

*a.* The use of equine animals and llamas is limited to roadways or to trails designated for such use.

*b.* Animals are prohibited within designated beach areas.

*c.* Livestock are not permitted to graze or roam within state parks and recreation areas. The owner of the livestock shall remove the livestock immediately upon notification by department personnel in charge of the area.

*d.* Animals are prohibited in all park buildings, with the following exceptions:

(1) Service dogs and assistive animals.

(2) Dogs in designated cabins and yurts. A maximum of two dogs of any size shall be allowed in any designated cabin or yurt.

(3) Animals being used in education and interpretation programs.

*e.* Except for dogs being used in designated hunting or in dog training areas, pets such as dogs or cats shall not be allowed to run at large within state parks, recreation areas, or preserves. Such animals shall be on a leash or chain not to exceed six feet in length and shall be either led by or carried by the owner; attached to an anchor/tie-out or vehicle; or confined in a vehicle. Pets shall not be left unattended

in campgrounds. Dogs shall be kenneled when left unattended in a cabin or yurt and shall not be left unattended if tied up outside of the cabin or yurt.

**61.7(2) Beach use/swimming.**

*a.* Except as provided in paragraphs “*b*” and “*c*” of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

*b.* Persons may scuba dive in areas other than the designated beach area provided they display the diver’s flag as specified in rule 571—41.10(462A).

*c.* Swimming outside beach area.

(1) Persons may swim outside the beach area under the following conditions:

1. Swimming must take place between sunrise and sunset;

2. The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim;

3. The vessel accompanying the swimmer must display a flag, which is at least 12-inches square, is bright orange, and is visible all around the horizon; and

4. The person swimming pursuant to this subparagraph must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

(2) Unless swimming is otherwise posted as prohibited or limited to the designated beach area, a person may also swim outside the beach area provided that the person swims within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach. Any vessel, except one being uprighted, must be attended at all times by at least one person remaining on board.

(3) A passenger on a sailboat or other vessel may enter the water to upright or repair the vessel and must remain within ten feet of that vessel.

*d.* The provisions of paragraph “*a*” of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

*e.* Alcoholic liquor, beer, and wine, as each is defined in Iowa Code section 123.3, are prohibited on the beaches located within Lake Macbride State Park and Pleasant Creek State Recreation Area. This ban does not apply to rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the department.

**61.7(3) Bottles.** Possession or use of breakable containers, the fragmented parts of which can injure a person, is prohibited in beach areas of state parks and recreation areas.

**61.7(4) Chainsaws.** Except by written permission of the director of the department, chainsaw use is prohibited in state parks and recreation areas. This provision is not applicable to employees of the department in the performance of their official duties.

**61.7(5) Firearms.** The use of firearms in state parks and recreation areas as defined in rule 571—61.2(461A) is limited to the following:

*a.* Lawful hunting as traditionally allowed at Badger Creek Recreation Area, Brushy Creek Recreation Area, Pleasant Creek Recreation Area, Mines of Spain Recreation Area (pursuant to rule 571—61.9(461A)), Volga River Recreation Area and Wilson Island Recreation Area.

*b.* Target and practice shooting in areas designated by the department.

*c.* Special events, festivals, and education programs sponsored or permitted by the department.

*d.* Special hunts authorized by the commission to control deer populations.

**61.7(6) Fishing off boat docks within state areas.** Persons may fish off all state-owned docks within state parks and recreation areas. Persons fishing off these docks must yield to boats and not interfere with boaters.

**61.7(7) Garbage.** Using government refuse receptacles for dumping household, commercial, or industrial refuse brought as such from private property is prohibited.

**61.7(8) Motor vehicle restrictions.**

*a.* Except as provided in these rules, motor vehicles are prohibited on state parks, recreation areas and preserves except on constructed and designated roads, parking lots and campgrounds.

*b.* Use of motorized vehicles by persons with physical disabilities. Persons with physical disabilities may use certain motorized vehicles to access specific areas in state parks, recreation areas and preserves, according to restrictions set out in this paragraph, in order to enjoy the same recreational opportunities available to others. Allowable vehicles include any self-propelled electric or gas vehicle which has at least three wheels, but no more than six wheels, and is limited in engine displacement to less than 800 cubic centimeters and in total dry weight to less than 1,450 pounds.

(1) Permits.

1. Each person with a physical disability must have a permit issued by the director in order to use a motorized vehicle in specific areas within state parks, recreation areas, and preserves. Such permits will be issued without charge. One nonhandicapped companion may accompany the permit holder on the same vehicle if that vehicle is designed for more than one rider; otherwise the companion must walk.

2. Existing permits. Those persons possessing a valid permit for use of a motorized vehicle on game management areas as provided in 571—51.7(461A) may use a motorized vehicle to gain access to specific areas for recreational opportunities and facilities within state parks, recreation areas and preserves.

(2) Approved areas. On each visit, the permit holder must contact the park staff in charge of the specific area in which the permit holder wishes to use a motorized vehicle. The park staff must designate on a park map the area(s) where the permit holder will be allowed to use a motorized vehicle. This restriction is intended to protect the permit holder from hazards or to protect certain natural resources. The map is to be signed and dated on each visit by the park staff in charge of the area. Approval for use of a motorized vehicle on state preserves also requires consultation with a member of the preserves staff in Des Moines.

(3) Exclusive use. The issuance of a permit does not imply that the permittee has exclusive or indiscriminate use of an area. Permittees shall take reasonable care not to unduly interfere with the use of the area by others.

(4) Prohibited acts and restrictions.

1. Except as provided in 61.7(8) “*b*,” the use of a motorized vehicle on any park, recreation area or preserve by a person without a valid permit or at any site not approved on a signed map is prohibited. Permits and maps shall be carried by the permittee at any time the permittee is using a motorized vehicle in a park, recreation area or preserve and shall be exhibited to any department employee or law enforcement official upon request.

2. The speed limit for an approved motor vehicle off-road will be no more than 5 mph. The permit of a person who is found exceeding the speed limit will be revoked.

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked.

(5) Employees exempt. Restrictions in subrule 61.7(8) shall not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management or enforcement when in performance of their duties.

**61.7(9) Noise.** Creating or sustaining any unreasonable noise in any portion of any state park or recreation area is prohibited at all times. The nature and purpose of a person’s conduct, the impact on other area users, the time of day, location, and other factors which would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is unreasonable. Unreasonable noise includes, but is not necessarily limited to, the operation or utilization of motorized equipment or machinery such as an electric generator, motor vehicle, or motorized toy; or audio device such as a radio, television set, public address system, or musical instrument. Between the hours of 10:30 p.m. and 6 a.m., noise which can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

**61.7(10) Opening and closing times.** Except by arrangement or permission granted by the director or the director’s authorized representative or as otherwise stated in this chapter, the following restrictions shall apply: All persons shall vacate all state parks and preserves before 10:30 p.m. each day, except authorized campers in accordance with Iowa Code section 461A.46, and no person or persons shall enter into such parks and preserves until 4 a.m. the following day.

**61.7(11) *Paintball guns.*** The use of any item generally referred to as a paintball gun is prohibited in state parks, recreation areas and preserves.

**61.7(12) *Restrictions on picnic site use.***

*a.* Open picnic sites marked with the international symbol of accessibility shall be used only by a person or group with a person qualifying for and displaying a persons with disabilities parking permit on the person's vehicle.

*b.* Paragraph 61.7(12)“*a*” does not apply to picnic shelters marked with the international accessibility symbol. The use of the symbol on shelters shall serve only as an indication that the shelter is wheelchair accessible.

**61.7(13) *Rock climbing or rappelling.*** The rock climbing practice known as free climbing and climbing or rappelling activities which utilize bolts, pitons, or similar permanent anchoring equipment or ropes, harnesses, or slings are prohibited in state parks and recreation areas, except by persons or groups registered with the park staff in charge of the area. Individual members of a group must each sign a registration. Climbing or rappelling will not be permitted at Elk Rock State Park, Marion County; Ledges State Park, Boone County; Dolliver Memorial State Park, Webster County; Stone State Park, Woodbury and Plymouth Counties; Maquoketa Caves State Park, Jackson County; Wildcat Den State Park, Muscatine County; or Mines of Spain Recreation Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

**61.7(14) *Speech or conduct interfering with lawful use of an area by others.***

*a.* Speech commonly perceived as offensive or abusive is prohibited when such speech interferes with lawful use and enjoyment of the area by another member of the public.

*b.* Quarreling or fighting is prohibited when it interferes with the lawful use and enjoyment of the area by another member of the public.

**61.7(15) *Deer population control hunts.*** Deer hunting as allowed under Iowa Code section 461A.42(1)“*c*” is permitted only during special hunts in state parks as provided under 571—Chapter 105 and as approved by the commission. During the dates of special hunts, only persons engaged in deer hunting shall use the area or portions thereof as designated by the department and signed as such.

**61.7(16) *Special event permits.*** Rescinded IAB 6/1/11, effective 7/6/11.

[ARC 7683B, IAB 4/8/09, effective 5/13/09; ARC 9541B, IAB 6/1/11, effective 7/6/11; ARC 0383C, IAB 10/3/12, effective 11/7/12; ARC 2694C, IAB 8/31/16, effective 10/5/16]

**571—61.8(461A) Certain conditions of public use applicable to specific parks and recreation areas.** In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to the specific areas listed as follows:

**61.8(1) *Brushy Creek State Recreation Area, Webster County.*** Swimming is limited by the provisions of 61.7(2); also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily.

**61.8(2) *Hattie Elston Access and Claire Wilson Park, Dickinson County.***

*a.* Parking of vehicles overnight on these areas is prohibited unless the vehicle operator and occupants are actively involved in boating or are fishing as allowed under 571—61.11(461A).

*b.* Overnight camping is prohibited.

**61.8(3) *Mines of Spain Recreation Area, Dubuque County.*** All persons shall vacate all portions of the Mines of Spain Recreation Area prior to 10:30 p.m. each day, and no person or persons shall enter into the area until 4 a.m. the following day.

**61.8(4) *Pleasant Creek Recreation Area, Linn County.*** Swimming is limited by the provisions of 61.7(2); also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily. Access into and out of the north portion of the area between the east end of the dam to the campground shall be closed from 10:30 p.m. to 4 a.m., except that walk-in overnight fishing will be allowed along the dam. The areas known as the dog trial area and the equestrian area shall be closed from 10:30 p.m. to 4 a.m., except for equestrian camping and for those persons participating in a department-authorized field trial. From 10:30 p.m. to 4 a.m., only registered campers are permitted in the campground.

**61.8(5)** *Wapsipinicon State Park, Jones County.* The land adjacent to the park on the southeast corner and generally referred to as the “Ohler property” is closed to the public from 10:30 p.m. to 4 a.m.  
[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.9(461A) Mines of Spain hunting, trapping and firearms use.**

**61.9(1)** The following described portions of the Mines of Spain Recreation Area are established and will be posted as wildlife refuges:

*a.* That portion within the city limits of the city of Dubuque located west of U.S. Highway 61 and north of Mar Jo Hills Road.

*b.* The tract leased by the department from the city of Dubuque upon which the E. B. Lyons Interpretive Center is located.

*c.* That portion located south of the north line of Section 8, Township 88 North, Range 3 East of the 5th P.M. between the west property boundary and the east line of said Section 8.

*d.* That portion located north of Catfish Creek, east of the Mines of Spain Road and south of the railroad tracks. This portion contains the Julien Dubuque Monument.

**61.9(2)** Trapping and archery hunting for all legal species are permitted in compliance with all open-season, license and possession limits on the Mines of Spain Recreation Area except in those areas designated as refuges by 61.9(1).

**61.9(3)** Firearms use is prohibited in the following described areas:

*a.* The areas described in 61.9(1).

*b.* The area north and west of Catfish Creek and west of Granger Creek.

**61.9(4)** Deer hunting and hunting for all other species are permitted using shotguns only and are permitted only during the regular gun season as established by 571—Chapter 106. Areas not described in 61.9(3) are open for hunting. Hunting shall be in compliance with all other regulations.

**61.9(5)** Turkey hunting with shotguns is allowed only in compliance with the following regulations:

*a.* Only during the first shotgun hunting season established in 571—Chapter 98, which is typically four days in mid-April.

*b.* Only in that area of the Mines of Spain Recreation Area located east of the established roadway and south of the Horseshoe Bluff Quarry.

**61.9(6)** The use or possession of a handgun or any type of rifle is prohibited on the entire Mines of Spain Recreation Area except as provided in 61.9(4). Target and practice shooting with any type of firearm is prohibited.

**61.9(7)** All forms of hunting, trapping and firearms use not specifically permitted by 571—61.9(461A) are prohibited in the Mines of Spain Recreation Area.

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.10(461A) After-hours fishing—exception to closing time.** Persons shall be allowed access to the areas designated in rule 571—61.11(461A) between the hours of 10:30 p.m. and 4 a.m. under the following conditions:

1. The person shall be actively engaged in fishing.

2. The person shall behave in a quiet, courteous manner so as not to disturb other users of the park.

3. Access to the fishing site from the parking area shall be by the shortest and most direct trail or access facility.

4. Vehicle parking shall be in the lots designated by signs posted in the area.

5. Activities other than fishing are allowed with permission of the director or an employee designated by the director.

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.11(461A) Designated areas for after-hours fishing.** These areas are open from 10:30 p.m. to 4 a.m. for fishing only. The areas are described as follows:

**61.11(1)** *Black Hawk Lake, Sac County.* The area of the state park between the road and the lake running from the marina at Drillings Point on the northeast end of the lake approximately three-fourths

of a mile in a southwesterly direction to a point where the park boundary decreases to include only the roadway.

**61.11(2)** *Claire Wilson Park, Dickinson County.* The entire area including the parking lot, shoreline and fishing trestle facility.

**61.11(3)** *Clear Lake State Park, Ritz Unit, Cerro Gordo County.* The boat ramp, courtesy dock, fishing dock and parking lots.

**61.11(4)** *Elinor Bedell State Park, Dickinson County.* The entire length of the shoreline within state park boundaries.

**61.11(5)** *Elk Rock State Park, Marion County.* The Teeter Creek boat ramp area just east of State Highway 14, access to which is the first road to the left after the entrance to the park.

**61.11(6)** *Green Valley State Park, Union County.* The shoreline adjacent to Green Valley Road commencing at the intersection of Green Valley Road and 130th Street and continuing south along the shoreline to the parking lot on the east side of the dam, and then west along the dam embankment to the shoreline adjacent to the parking lot on the west side of the spillway.

**61.11(7)** *Hattie Elston Access, Dickinson County.* The entire area including the parking lot shoreline and boat ramp facilities.

**61.11(8)** *Honey Creek State Park, Appanoose County.* The boat ramp area located north of the park office, access to which is the first road to the left after the entrance to the park.

**61.11(9)** *Geode State Park, Des Moines County portion.* The area of the dam embankment that is parallel to County Road J20 and lies between the two parking lots located on each end of the embankment.

**61.11(10)** *Lake Keomah State Park, Mahaska County.*

a. The embankment of the dam between the crest of the dam and the lake.

b. The shoreline between the road and the lake from the south boat launch area west and north to the junction with the road leading to the group camp shelter.

**61.11(11)** *Lake Macbride State Park, Johnson County.* The shoreline of the south arm of the lake adjacent to the county road commencing at the “T” intersection of the roads at the north end of the north-south causeway proceeding across the causeway thence southeasterly along a foot trail to the east-west causeway, across the causeway to the parking area on the east end of that causeway.

**61.11(12)** *Lake Manawa State Park, Pottawattamie County.* The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south 1.5 miles to the parking lot immediately north of the picnic area located on the west side of the southwest arm of the lake.

**61.11(13)** *Lower Pine Lake, Hardin County.* West shoreline along Hardin County Road S56 from the beach southerly to the boat ramp access.

**61.11(14)** *Mini-Wakan State Park, Dickinson County.* The entire area.

**61.11(15)** *North Twin Lake State Park, Calhoun County.* The shoreline of the large day-use area containing the swimming beach on the east shore of the lake.

**61.11(16)** *Pikes Point State Park, Dickinson County.* The shoreline areas of Pikes Point State Park on the east side of West Okobojo Lake.

**61.11(17)** *Prairie Rose State Park, Shelby County.* The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area located off County Road M47 and just north of the entrance leading to the park office.

**61.11(18)** *Rock Creek Lake, Jasper County.* Both sides of the County Road F27 causeway across the main north portion of the lake.

**61.11(19)** *Union Grove State Park, Tama County.*

a. The dam embankment from the spillway to the west end of the parking lot adjacent to the dam.

b. The area of state park that parallels BB Avenue, from the causeway on the north end of the lake southerly to a point approximately one-tenth of a mile southwest of the boat ramp.

**61.11(20)** *Upper Pine Lake, Hardin County.* Southwest shoreline extending from the boat launch ramp to the dam.

**61.11(21) *Viking Lake State Park, Montgomery County.*** The embankment of the dam from the parking area located southeast of the dam area northwesterly across the dam structure to its intersection with the natural shoreline of the lake.

[ARC 9186B, IAB 11/3/10, effective 12/8/10]

**571—61.12(461A) Vessels prohibited.** Rule 571—61.11(461A) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

**571—61.13(461A) Severability.** Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

**571—61.14(461A) Restore the outdoors program.** Funding provided through the appropriation set forth in Iowa Code section 461A.3A, and subsequent Acts, shall be used to renovate, replace or construct new vertical infrastructure and associated appurtenances in state parks and other public facilities managed by the department.

The intended projects will be included in the department's annual five-year capital plan in priority order by year and approved by the commission for inclusion in its capital budget request.

The funds appropriated by Iowa Code section 461A.3A, and subsequent Acts, will be used to renovate, replace or construct new vertical infrastructure through construction contracts, agreements with local government entities responsible for managing state parks and other public facilities, and agreements with the department of corrections to use offender labor where possible. Funds shall also be used to support site survey, design and construction contract management through consulting engineering and architectural firms and for direct survey, design and construction management costs incurred by department engineering and architectural staff for restore the outdoors projects. Funds shall not be used to support general department oversight of the restore the outdoors program, such as accounting, general administration or long-range planning.

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.15(461A,463C) Honey Creek Resort State Park.** This chapter shall not apply to Honey Creek Resort State Park, with the exception that subrules 61.7(3) through 61.7(9) and 61.7(11) through 61.7(15) shall apply to the operation and management of Honey Creek Resort State Park. Where permission is required to be obtained from the department, an authorized representative of the department's management company may provide such permission in accordance with policies established by the department.

[ARC 0383C, IAB 10/3/12, effective 11/7/12; ARC 2052C, IAB 7/8/15, effective 9/15/15]

**571—61.16 to 61.19** Reserved.

DIVISION II  
STATE FOREST CAMPING

**571—61.20(461A) Camping areas established and marked.**

**61.20(1)** Areas to be utilized for camping shall be established within each of the state forests listed in rule 571—61.1(461A).

**61.20(2)** Signs designating the established camping areas shall be posted along the access roads into these areas and around the perimeter of the area designated for camping use.

**61.20(3)** Areas approved for backpack camping (no vehicular access) shall be marked with appropriate signs and shall contain fire rings.

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.21(461A) Campground reservations.** Procedures and policies regarding camping reservations in established state forest campgrounds shall be the same as those cited in rule 571—61.3(461A). Reservations will not be accepted for backpack campsites.  
[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.22(461A) Camping fees and registration.**

**61.22(1) Fees.**

*a.* Backpack campsites. No fee will be charged for the use of the designated backpack campsites.  
*b.* The fees for camping in established state forest campgrounds shall be the same as those cited in paragraphs 61.4(1) “*a*” and “*b*” for all other nonmodern camping areas managed by the department where fees are charged.

**61.22(2) Procedures for camping registration.**

*a.* Backpack campsites. Persons using backpack campsites shall register at the forest area check station or other designated site.  
*b.* The procedures for camping registration in established state forest campgrounds shall be the same as those cited in paragraphs 61.4(3) “*a*,” “*b*,” and “*c*.”  
*c.* Organized youth group campsites. The procedures for camping registration for organized youth group campsites shall be the same as those cited in subrule 61.4(4).

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

**571—61.23(461A) Restrictions—area and use.**

**61.23(1)** Restrictions of campsite or campground use in established state forest campgrounds shall be the same as those cited in paragraphs 61.4(5) “*a*” through “*c*,” “*e*” through “*k*,” “*m*,” and “*n*.”

**61.23(2)** Hours. Access into and out of the established camping areas shall be permitted from 4 a.m. to 10:30 p.m. From 10:31 p.m. to 3:59 a.m., only registered campers are permitted in the campgrounds.

**61.23(3)** Firearms use prohibited. Except for peace officers acting in the scope of their employment, the use of firearms, fireworks, explosives, and weapons of all kinds by the public is prohibited within the established camping area as delineated by signs marking the area.

**61.23(4)** Pets. Pets such as dogs or cats shall not be allowed to run at large within established state forest camping areas. Such animals shall be on a leash or chain not to exceed six feet in length and shall be either led by or carried by the owner; attached to an anchor, tie-out or vehicle; or confined in a vehicle.

**61.23(5)** Noise. Subrule 61.7(9) shall apply to established state forest camping areas.

[ARC 0383C, IAB 10/3/12, effective 11/7/12]

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code chapters 463C and 724.

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<sup>0</sup> Two or more ARCs

<sup>1</sup> Effective date of subrule 61.6(2) and rule 61.7(7/31/91) delayed 70 days by the Administrative Rules Review Committee at its meeting held 7/12/91.

<sup>2</sup> Amendments to 61.4(2) “f” and 61.3(5) “a” effective January 1, 1993.

<sup>3</sup> Amendments to 61.4(2) “a” to “d” effective October 31, 1993.



TITLE VII  
FORESTRY

## CHAPTER 71

## NURSERY STOCK SALE TO THE PUBLIC

[Prior to 12/31/86, Conservation Commission[290] Ch 48]

**571—71.1(456A,461A) Purpose.** The department of natural resources shall sell nursery stock to private landowners and public agencies to encourage the establishment of wildlife habitat and erosion control plantings and to promote forestry.

**571—71.2(456A,461A) Procedures.**

**71.2(1) Description of nursery stock to be sold.**

- a. Plants sold for use on private land shall not exceed four years of age.
- b. Plants sold for use on private land shall be barerooted.
- c. Only those species in accepted use for wildlife habitat, erosion control and forestry plantings shall be sold for use on private land.
- d. Seeds and cuttings of those species in paragraph “c” may be sold for use on private land.

**71.2(2) Order limitations.**

a. The minimum acceptable order shall be 500 plants in total with the minimum number of 100 plants of one species.

(1) To complete the previous year’s planting, a purchaser may order less than 500 plants with a minimum of 100 plants of one species.

(2) Special purpose packets shall contain the number and species of plants as determined annually by the state forester but not to exceed 400 plants.

b. If a shortage occurs, substitution of suitable species may be made at the discretion of the state forester.

**71.2(3) Customer obligation.**

a. Nursery stock planted on private land shall be for the purpose of wildlife habitat establishment, the control of soil erosion or to establish forest cover.

b. Purchasers of nursery stock for planting on private land shall, as a part of the order, be required to certify the plants will be used for wildlife habitat, erosion control or forestation purposes and will not be used to establish a new farmstead windbreak, shade trees or ornamental plantings.

c. All purchasers of stock shall, as a part of the plant order, be required to certify as to the county in which the nursery stock will be planted.

d. All purchasers shall be required as a part of the plant order, to certify that the plants purchased will not be sold with roots attached.

[ARC 9051B, IAB 9/8/10, effective 10/13/10 (See Delay note at end of chapter)]

**571—71.3(456A,461A) Nursery stock prices.**

**71.3(1) Prices for hardwoods shall be as follows:**

- a. Aspen, oak, hickory, walnut, pecan and basswood, 6” to 16”—\$65 per hundred plants.
- b. Aspen, oak, hickory, walnut, pecan and basswood, 17” and larger—\$90 per hundred plants.
- c. Other hardwood tree species, 6” to 16”—\$65 per hundred plants.
- d. Other hardwood tree species, 17” and larger—\$90 per hundred plants.

**71.3(2) Prices for shrubs shall be as follows:**

- a. Elderberry, buttonbush, dogwood, and Nanking cherry, 6” to 16”—\$65 per hundred plants.
- b. Elderberry, buttonbush, dogwood, and Nanking cherry, 17” and larger—\$90 per hundred plants.
- c. Other shrub species, 6” to 16”—\$70 per hundred plants.
- d. Other shrub species, 17” and larger—\$90 per hundred plants.

**71.3(3) Prices for conifers shall be as follows:**

- a. Conifers, 6” to 16”—\$50 per hundred plants.
- b. Conifers, 17” and larger—\$80 per hundred plants.

**71.3(4) Prices for wildlife packets shall be \$190 each.**

**71.3(5)** Prices for songbird packets shall be \$45 each.

**71.3(6)** For promotion of conservation plantings, nursery stock may be provided to schools and conservation and education groups to use for Arbor Day and other special events.

[ARC 7857B, IAB 6/17/09, effective 7/22/09; ARC 2693C, IAB 8/31/16, effective 10/5/16]

These rules are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

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[Editorial change: IAC Supplement 10/20/10]

[Filed ARC 2693C (Notice ARC 2558C, IAB 6/8/16), IAB 8/31/16, effective 10/5/16]

<sup>1</sup> October 13, 2010, effective date of rescission of 71.2(2) “c” delayed 30 days by the Administrative Rules Review Committee at its meeting held October 12, 2010.

CHAPTER 106  
DEER HUNTING BY RESIDENTS  
[Prior to 12/31/86, Conservation Commission[290] Ch 106]

**571—106.1(481A) Licenses.** When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person. No one who is issued a deer hunting license and transportation tag shall allow another person to use or possess that license or transportation tag while that person is deer hunting or tagging a deer.

**106.1(1) Type of license.**

*a. General deer licenses.* General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in Buena Vista, Calhoun, Cerro Gordo, Cherokee, Clay, Dickinson, Emmet, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Ida, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Webster, Winnebago, Worth and Wright counties during the early muzzleloader or first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

*b. Antlerless-deer-only licenses.* Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as selected at the time the license is purchased. Free and reduced-fee antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

**106.1(2) Bow season licenses.** General deer and antlerless-deer-only licenses, paid or free, shall be valid in both segments of the bow season.

**106.1(3) Regular gun season licenses.** Paid general deer and antlerless-deer-only licenses shall be valid in either the first or the second regular gun season, as designated on the license. Free general deer licenses and antlerless-deer-only licenses shall be valid in both the first and second regular gun seasons.

**106.1(4) Muzzleloader season licenses.** General deer and antlerless-deer-only licenses, paid or free, shall be valid in either the early or the late muzzleloader season, as designated on the license.

**106.1(5) November antlerless-deer-only licenses.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.1(6) January antlerless-deer-only licenses.** Rescinded IAB 8/6/14, effective 9/10/14.

**106.1(7) Free and reduced-fee deer licenses for landowners and tenants.** A maximum of one free general deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or eligible family member and a qualifying tenant or eligible family member. Eligibility for licenses is described in 571—106.12(481A). The free general deer license shall be available for one of the following seasons: the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. One free antlerless-deer-only license shall be available for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and will be available only if a portion of the farm unit lies within a county where paid antlerless-deer-only licenses are available during that season. Each reduced-fee antlerless-deer-only license shall be valid for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, first and second regular gun seasons, or January antlerless-deer-only season. January antlerless-deer-only licenses will be available only if a portion of the farm unit is located in a county where paid antlerless-deer-only licenses are available in that season.

**106.1(8) Antlerless-deer-only crossbow licenses for senior citizens.** Persons 70 years old or older may obtain one paid antlerless-deer-only license valid statewide for taking antlerless deer with a crossbow. The license will be valid only during the bow season.

**106.1(9) Nonambulatory deer hunting licenses.** The commission shall issue licenses in conformance with 2009 Iowa Acts, Senate File 187. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified by the applicant's attending physician with an original signature and declare that the applicant is nonambulatory using the criteria listed in 2009 Iowa Acts, Senate File 187. A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½" × 11" letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

[ARC 7921B, IAB 7/1/09, effective 8/5/09; ARC 8255B, IAB 11/4/09, effective 12/9/09; ARC 8888B, IAB 6/30/10, effective 8/18/10; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

**571—106.2(481A) Season dates.** Deer may be taken only during the following seasons:

**106.2(1) Bow season.** Deer may be taken in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year.

**106.2(2) Regular gun seasons.** Deer may be taken in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

**106.2(3) Muzzleloader seasons.** Deer may be taken in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

**106.2(4) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.2(5) January antlerless-deer-only season.** Rescinded IAB 8/6/14, effective 9/10/14.  
[ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

**571—106.3(481A) Shooting hours.** Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

**571—106.4(481A) Limits.**

**106.4(1) Bow season.** The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

**106.4(2) Muzzleloader seasons.** The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

**106.4(3) Regular gun seasons.** The bag limit is one deer for each hunter in the party who has a valid deer transportation tag. The possession limit is one deer per license. "Possession" shall mean that the deer is in the possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

**106.4(4) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.4(5) January antlerless-deer-only season.** Rescinded IAB 8/6/14, effective 9/10/14.

**106.4(6) Maximum annual possession limit.** The maximum annual possession limit for a resident deer hunter is one deer for each legal license and transportation tag obtained.

[ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

**571—106.5(481A) Areas closed to hunting.** There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth

County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

**571—106.6(481A) Paid deer license quotas and restrictions.** Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

**106.6(1) Paid general deer licenses.** Residents may purchase no more than two paid general deer licenses, one for the bow season and one for one of the following seasons: early muzzleloader season, late muzzleloader season, first regular gun season, or second regular gun season. No more than 7,500 paid statewide general deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid general deer licenses issued in the bow season, late muzzleloader season, first regular gun season, or second regular gun season.

**106.6(2) Paid antlerless-deer-only licenses.** Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached.

*a.* Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, except as outlined in 106.6(2)“*b.*” A license must be used in the season, county or deer population management area selected at the time the license is purchased.

*b.* No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide general deer licenses. Hunters who purchase one of the 7,500 paid statewide general deer licenses for the early muzzleloader season may not obtain paid antlerless licenses for the first or second regular gun season.

*c.* Prior to September 15, a hunter may purchase one antlerless-deer-only license for any season for which the hunter is eligible. Beginning September 15, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season for which the hunter is eligible, as set forth in 106.6(2)“*b.*” until the county or population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

**106.6(3) November antlerless-deer-only season.** Rescinded IAB 7/11/12, effective 8/15/12.

**106.6(4) January antlerless-deer-only licenses.** Rescinded IAB 8/6/14, effective 9/10/14.

**106.6(5) Free landowner/tenant licenses.** A person obtaining a free landowner/tenant license may purchase any combination of paid bow and paid gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.12(481A).

**106.6(6) Antlerless-deer-only licenses.** Paid antlerless-deer-only licenses will be available by county for the 2016 deer season as follows:

County	Quota	County	Quota	County	Quota
Adair	1025	Floyd	0	Monona	850
Adams	1450	Franklin	0	Monroe	1950
Allamakee	2975	Fremont	525	Montgomery	750
Appanoose	2200	Greene	0	Muscatine	775
Audubon	0	Grundy	0	O’Brien	0
Benton	325	Guthrie	1950	Osceola	0
Black Hawk	0	Hamilton	0	Page	750
Boone	450	Hancock	0	Palo Alto	0
Bremer	650	Hardin	0	Plymouth	0
Buchanan	200	Harrison	850	Pocahontas	0
Buena Vista	0	Henry	925	Polk	1350
Butler	0	Howard	200	Pottawattamie	850
Calhoun	0	Humboldt	0	Poweshiek	300

County	Quota	County	Quota	County	Quota
Carroll	0	Ida	0	Ringgold	2200
Cass	400	Iowa	450	Sac	0
Cedar	775	Jackson	675	Scott	200
Cerro Gordo	0	Jasper	775	Shelby	225
Cherokee	0	Jefferson	1650	Sioux	0
Chickasaw	375	Johnson	850	Story	150
Clarke	2100	Jones	525	Tama	200
Clay	0	Keokuk	450	Taylor	2200
Clayton	2775	Kossuth	0	Union	1500
Clinton	400	Lee	1275	Van Buren	3800
Crawford	150	Linn	850	Wapello	1825
Dallas	1875	Louisa	775	Warren	2200
Davis	2800	Lucas	2200	Washington	750
Decatur	2200	Lyon	0	Wayne	2200
Delaware	525	Madison	2100	Webster	0
Des Moines	800	Mahaska	475	Winnebago	0
Dickinson	0	Marion	1650	Winneshiek	1975
Dubuque	725	Marshall	150	Woodbury	850
Emmet	0	Mills	750	Worth	0
Fayette	1500	Mitchell	0	Wright	0

[ARC 7921B, IAB 7/1/09, effective 8/5/09; ARC 8888B, IAB 6/30/10, effective 8/18/10; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 0830C, IAB 7/10/13, effective 8/14/13; ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 2086C, IAB 8/5/15, effective 9/9/15; ARC 2697C, IAB 8/31/16, effective 8/12/16]

**571—106.7(481A) Method of take.** Permitted weapons and devices vary according to the type of season.

**106.7(1) Bow season.** Only longbow, compound or recurve bows shooting broadhead arrows are permitted during the bow season. Arrows must be at least 18 inches long.

a. Crossbows may be used during the bow season in the following two situations:

(1) By persons with certain afflictions of the upper body as provided in 571—15.5(481A); and

(2) By persons over the age of 70 with an antlerless-deer-only license as provided in Iowa Code section 483A.8A.

b. No explosive or chemical devices may be attached to the arrow, broadhead or bolt (if used with a crossbow).

**106.7(2) Regular gun seasons.** Only 10-, 12-, 16- and 20-gauge shotguns shooting single slugs and muzzleloaders and handguns as described in 106.7(3) will be permitted for taking deer during the regular gun seasons.

**106.7(3) Muzzleloader seasons.** Only muzzleloading rifles and muzzleloading pistols will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, centerfire handgun, crossbow or bow as described in 106.7(1). Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Legal handgun calibers are listed on the department of natural resources list of acceptable handgun calibers for hunting deer in Iowa. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Muzzleloading handguns must be .44 caliber or larger, shooting single projectiles only.

Crossbow means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical trigger and a working safety. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

**106.7(4)** *November antlerless-deer-only season.* Rescinded IAB 7/11/12, effective 8/15/12.

**106.7(5)** *January antlerless-deer-only season.* Rescinded IAB 8/6/14, effective 9/10/14.

**106.7(6)** *Prohibited weapons and devices.* The use of dogs, domestic animals, bait, rifles other than muzzleloaded or as provided in 106.7(5), handguns except as provided in 106.7(3), crossbows except as provided in 106.7(1) and 106.7(3), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. “Bait” means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. “Paraplegic” means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.7(3) and 106.7(5). It shall be unlawful for a person hunting with a bow license to carry a handgun unless that person also has a valid deer hunting license and an unfilled transportation tag that permits a handgun to be used to take deer.

**106.7(7)** *Discharge of firearms from roadway.* No person shall discharge a rifle, including a muzzleloading rifle or musket, or a handgun from a highway while deer hunting. In addition, no person shall discharge a shotgun shooting slugs from a highway north of U.S. Highway 30. A “highway” means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

**106.7(8)** *Hunting from blinds.* No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 106.2(2), unless such blind exhibits a solid blaze orange marking which is a minimum of 144 square inches in size and is visible in all directions. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term “blind” is defined as an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

[ARC 9717B, IAB 9/7/11, effective 10/12/11; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 2086C, IAB 8/5/15, effective 9/9/15]

**571—106.8(481A) Procedures to obtain licenses.** All resident deer hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses may be purchased from ELSI license agents, or online at [www.iowadnr.com](http://www.iowadnr.com), or by calling the ELSI telephone ordering system.

**106.8(1)** *Licenses with quotas.* All paid deer hunting licenses for which a quota is established may be obtained from the ELSI system on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid.

**106.8(2)** *Licenses without quotas.* All deer hunting licenses that have no quota may be obtained from the ELSI system beginning August 15 through the last day of the hunting period for which a license is valid.

**106.8(3)** *Providing false information.*

*a.* Any person who provides false information about the person’s identity or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall have the person’s hunting license revoked as a part of the sentencing for such criminal conviction, and the person shall not be issued a hunting license for one year pursuant to the authority of Iowa Code Supplement section 483A.24(2) “f” and rule 571—15.6(483A).

b. In addition to any legal penalties that may be imposed, the obtaining of a license in violation of this rule shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

**571—106.9(481A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is located after being taken or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. During the youth/disabled hunter season, bow season, early muzzleloader season and late muzzleloader season, the hunter who killed the deer must tag the deer by using the transportation tag issued in that person's name. During the first and second regular gun seasons and the January antlerless-deer-only season, anyone present in the hunting party may tag a deer with a tag issued in that person's name. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

[ARC 9717B, IAB 9/7/11, effective 10/12/11; ARC 0189C, IAB 7/11/12, effective 8/15/12]

**571—106.10(481A) Youth deer and severely disabled hunts.**

**106.10(1) Licenses.**

a. *Youth deer hunt.* A youth deer license may be issued to any Iowa resident who is not over 15 years old on the day the youth obtains the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free general deer license for which the youth's family is eligible.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in the direct company of the youth at all times.

A person may obtain only one youth general deer license but may also obtain any other paid or free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner with which other hunters obtain them, as described in 106.6(2).

b. *Severely disabled hunt.* Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one general deer license to hunt deer during the youth season. A person applying for this license must either possess a disability parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). The attending physician shall be currently practicing medicine and shall be a medical doctor, a doctor of osteopathy, a physician assistant, or a nurse practitioner. Forms are available online at [www.iowadnr.gov](http://www.iowadnr.gov), by visiting the DNR office at the Wallace State Office Building, Des Moines, Iowa, or any district office, or by calling (515)725-8200. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain any other paid and free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner by which other hunters obtain them, as described in 106.6(2).

**106.10(2) Season dates.** Deer of either sex may be taken statewide for 16 consecutive days beginning on the third Saturday in September. A person who is issued a youth deer hunting license and does not

take a deer during the youth deer hunting season may use the deer hunting license and unused tag during the early muzzleloader, late muzzleloader, and one of the shotgun seasons. The license will be valid for the type of deer and in the area specified on the original license. The youth must follow all other rules specified in this chapter for each season. A youth hunting in one of the other seasons must obtain a hunting license and habitat stamp or hunt with a licensed adult if required by Iowa Code section 483A.24. If the tag is filled during one of the seasons, the license will not be valid in subsequent seasons.

**106.10(3) *Shooting hours.*** Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

**106.10(4) *Limits and license quotas.*** An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

**106.10(5) *Method of take and other regulations.*** Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

**106.10(6) *Procedures for obtaining licenses.*** Paid and free youth season licenses and licenses for severely disabled hunters may be obtained through ELSI beginning August 15 through the last day of the youth season.

[ARC 1562C, IAB 8/6/14, effective 9/10/14; ARC 2086C, IAB 8/5/15, effective 9/9/15]

**571—106.11(481A) *Deer depredation management.*** The deer depredation management program provides assistance to producers through technical advice and additional deer licenses and permits where the localized reduction of female deer is needed to reduce damage. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

**106.11(1) *Method of take and other regulations.*** Legal weapons and restrictions will be governed by 571—106.7(481A). For deer shooting permits only, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93. The producer or designee must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

**106.11(2) *Eligibility.*** Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

- a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.
- b. Excessive damage is defined as crop losses exceeding \$1,000 in a single growing season, or the likelihood that damage will exceed \$1,000 if preventive action is not taken, or a documented history of at least \$1,000 of damage annually in previous years.
- c. Producers who lease their deer hunting rights are not eligible for the deer depredation management program.

**106.11(3) *Depredation management plans.*** Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by depredation biologists in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, and temporary fencing,

as well as allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of the measures in (1) above, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds \$1,000.

(3) Depredation permits to shoot deer may be issued to Iowa residents to reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

*b.* Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the depredation biologist and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

**106.11(4) *Depredation permits.*** Two types of permits may be issued under a depredation management plan.

*a.* Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for the regular deer license fee for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued up to the number specified in the management plan.

(2) The landowner or an eligible family member, which shall include the landowner's spouse or domestic partner and juvenile children, may obtain one depredation license for each season established by the commission. No other individual may initially obtain more than three depredation licenses per management plan. When a deer is reported harvested on one of these licenses, then another license may be obtained.

(3) Depredation licenses will be valid only for hunting antlerless deer, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(4) Hunters may keep any deer legally tagged with a depredation license.

(5) All other regulations for the hunting season specified on the license will apply.

(6) Depredation licenses will be valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in subparagraph (7). Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

(7) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation licenses issued to producers within the block hunt area are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt area boundaries. Creation of a given block hunt area does not authorize trespass.

*b.* Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers who have an approved DNR deer depredation plan, and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued at no cost to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops or agricultural crops may be valid for taking deer outside of a hunting season depending on the nature of the damage. The number and type of deer to be killed will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved signs an agreement with the department.

(5) All deer killed must be recovered and processed for human consumption.

(6) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(7) Antlers from all deer recovered must be turned over to the conservation officer within 48 hours. Antlers will be disposed of according to department rules.

(8) For out-of-season shooting permits, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93.

c. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

d. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd. This restriction does not apply in situations where shooting permits are issued for public safety concerns.

e. A person who receives a depredation permit pursuant to this paragraph shall pay a \$1 fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger (HUSH) program administered by the commission and a \$1 writing fee for each license to the license agent.

**106.11(5) *Disposal.*** Rescinded IAB 7/16/08, effective 8/20/08.  
[ARC 7921B, IAB 7/1/09, effective 8/5/09]

#### **571—106.12(481A) Eligibility for free landowner/tenant deer licenses.**

##### **106.12(1) *Who qualifies for free deer hunting licenses.***

a. Owners and tenants of a farm unit and the spouse and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

b. Juvenile child defined. “Juvenile child” means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

**106.12(2) *Who qualifies as a tenant.*** A “tenant” is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner’s family, including in some circumstances the landowner’s spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

**106.12(3) *What “actively engaged in farming” means.*** Landowners and tenants are “actively engaged in farming” if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

##### **106.12(4) *Landowners who qualify as active farmers.*** These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

*e.* May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

*f.* Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

**106.12(5)** *Landowners who do not qualify.* These landowners:

*a.* Use a farm manager or other third party to operate the farm, or

*b.* Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

**106.12(6)** *Where free licenses are valid.* A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. “Farm unit” means all parcels of land in tracts of two or more contiguous acres that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. “Agricultural purposes” includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

**106.12(7)** *Registration of landowners and tenants.* Landowners and tenants and their eligible family members who want to obtain free deer hunting licenses must register with the department before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

**571—106.13(481A) Harvest reporting.** Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

**571—106.14(481A) Extension to the regular gun seasons.** Rescinded IAB 7/16/08, effective 8/20/08.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.8, 483A.8B, 483A.8C, 483A.24 and 483A.24B.

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**REVENUE DEPARTMENT[701]**

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CHAPTER 27  
AUTOMOBILE RENTAL EXCISE TAX

**701—27.1(423C) Definitions and characterizations.** For the purposes of this chapter, the following definitions and characterizations of words apply.

*“Automobile”* means a motor vehicle subject to registration in any state and designed primarily for carrying nine or fewer passengers. Excluded from the meaning of the term “automobile” are delivery trucks designed primarily to carry cargo rather than passengers and motorcycles and motorized bicycles.

*“Lessor”* is a person engaged in the business of renting automobiles to users. Included within the meaning of the term “lessor” are motor vehicle dealers licensed under Iowa Code chapter 322 to sell new and used automobiles who also rent automobiles to users. A person need not be engaged in a profit-making enterprise to be in the business of renting automobiles.

*“Rental”* is a transfer of possession or right of possession to an automobile to a user for a valuable consideration for a period of 60 days or less.

*“Rental price”* means the total amount of consideration valued in money for renting an automobile.

*“User”* is any person to whom possession or right of possession of an automobile is transferred for a valuable consideration for a period of 60 days or less.

[ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—27.2(423C) Tax imposed upon rental of automobiles.** A tax at the rate of 5 percent is imposed on the rental price of any automobile if the rental transaction is taxed under Iowa sales or Iowa use tax law. The tax imposed is in addition to the Iowa state sales or use tax.

See rule 701—26.68(422) for a description of automobile rentals which are subject to Iowa sales tax and rule 701—33.8(423) for a description of automobile rentals which are subject to Iowa use tax. These rules should be used with care since they involve vehicles other than an “automobile” as that word is defined for the purpose of this chapter. For instance, rule 701—26.68(422) is concerned with boats and recreational vehicles as well as automobiles and other vehicles subject to registration. Summarizing the essential content of those rules regarding automobiles:

**27.2(1)** Sales tax is due on the rental price of the “rental” of an automobile if possession or the right to possession of the automobile is transferred, under a rental contract, in Iowa.

**27.2(2)** Use tax is due on the rental price if an automobile is rented outside Iowa, used in Iowa under the rental contract, and payment of the rental price is made in Iowa at the termination of the rental agreement.

[ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—27.3(423C) Lessor’s obligation to collect tax.** The lessor shall collect this automobile rental excise tax from the user or from any other person paying the rental price for an automobile. The lessor shall collect the tax by adding the tax to the rental price of the automobile. When collected, the tax shall be stated on any billing or invoice as a distinct item separate and apart from the rental price of the automobile and separate and apart from any state or local option sales or service tax or any state use tax.

[ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—27.4(423C) Administration of tax.** The excise tax on automobile rental is levied in addition to the state sales and use taxes imposed by Iowa Code chapter 423. The director of revenue is required to administer this excise tax on motor vehicle rental as nearly as possible in the fashion in which the state sales tax is administered. However, as an exception to this requirement, the director is to require only the filing of quarterly reports for motor vehicle excise tax. Quarterly, the correct amount of tax collected and due shall accompany the tax form prescribed by the department. No permit, other than an Iowa sales or use tax permit, will be required to collect the tax imposed under this chapter. However, the director may require all persons responsible for collecting and remitting motor vehicle rental excise tax to register

with the department. For other aspects concerning the details of administering the tax imposed under this chapter, see 701—Chapters 10, 11, 12, 13 and 14.

[ARC 2696C, IAB 8/31/16, effective 10/5/16]

These rules are intended to implement Iowa Code chapter 423C.

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[Filed ARC 2696C (Notice ARC 2574C, IAB 6/8/16), IAB 8/31/16, effective 10/5/16]

CHAPTER 40  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—40.1(422) Net income defined.** Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.2(422) Interest and dividends from federal securities.** For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

“Obligations of the United States” are those obligations issued “to secure credit to carry on the necessary functions of government.” *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the “borrowing” and “supremacy” clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

*Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor’s primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department’s interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

**40.2(1)** Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation
- b. Territorial obligations:*
  1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
  2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
  3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
  4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).
- c. Federal agency obligations:*
  1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
  2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
  3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
  4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
  5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
  6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
  7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
  8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
  9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
  10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
  11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
  12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
  13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
  14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
  15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).
  - Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
  - Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
  - Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
  - Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
  - Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).
17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).
18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).
19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).
20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).
21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).
22. Treasury Investment Growth Receipts.
23. Certificates on Government Receipts.

**40.2(2)** Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

- a. *Federal agency obligations:*
  1. Federal or State Savings and Loan Associations
  2. Export-Import Bank of the United States
  3. Building and Loan Associations
  4. Interest on federal income tax refunds
  5. Postal Savings Account
  6. Farmers Home Administration
  7. Small Business Administration
  8. Federal or State Credit Unions
  9. Mortgage Participation Certificates
  10. Federal National Mortgage Association
  11. Federal Home Loan Mortgage Corporation (Freddie Mac)
  12. Federal Housing Administration
  13. Federal National Mortgage Association (Fannie Mae)
  14. Government National Mortgage Association (Ginnie Mae)
  15. Merchant Marine (Maritime Administration)
  16. Federal Agricultural Mortgage Corporation (Farmer Mac)
- b. *Obligations of international institutions:*
  1. Asian Development Bank
  2. Inter-American Development Bank

3. International Bank for Reconstruction and Development (World Bank)

c. *Other obligations:*

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association (“Ginnie Maes”) is subject to Iowa income tax. See *Rockford Life Insurance Company v. Illinois Department of Revenue*, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.3(422) Interest and dividends from foreign securities and securities of state and other political subdivisions.** Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.
2. Urban renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal housing law - low-income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 161A.22.
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.
7. County health center: Bonds issued under Iowa Code section 331.441(2) “c”(7).
8. Iowa finance authority, water pollution control works and drinking water facilities financing: Bonds issued under Iowa Code section 16.131(5).
9. Iowa finance authority, beginning farmer loan program: Bonds issued under Iowa Code section 16.64.
10. Iowa finance authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
11. Iowa finance authority, E911 program notes and bonds: Bonds issued under Iowa Code section 34A.20(6).
12. Quad Cities interstate metropolitan authority bonds: Bonds issued under Iowa Code section 28A.24.
13. Prison infrastructure revenue bonds: Bonds issued under Iowa Code sections 12.80(3) and 16.177(8).
14. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.
15. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).
16. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.
17. Iowa higher education loan authority: Obligations issued by the authority pursuant to Iowa Code section 261A.27.
18. Vision Iowa program: Bonds issued pursuant to Iowa Code section 12.71(8).
19. School infrastructure program bonds: Bonds issued under Iowa Code section 12.81(8).

20. Honey Creek premier destination park bonds: Bonds issued under Iowa Code section 463C.12(8).

21. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under Iowa Code section 12.91(9).

22. Iowa jobs program revenue bonds: Bonds issued under Iowa Code section 12.87(8).

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2014 Iowa Acts, House File 2438.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.4(422) Certain pensions, annuities and retirement allowances.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.5(422) Military pay.**

**40.5(1)** Rescinded IAB 6/3/98, effective 7/8/98.

**40.5(2)** For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

*a.* When universal compulsory military service is reinstated by the United States Congress. “Compulsory military service” is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

*b.* When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.6(422) Interest and dividend income.** This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income

tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.7(422) Current year capital gains and losses.** In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

**701—40.8(422) Gains and losses on property acquired before January 1, 1934.** When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.9(422) Work opportunity tax credit and alcohol and cellulosic biofuel fuels credit.** Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol and cellulosic biofuel fuels credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The work opportunity tax credit applies to eligible individuals who begin work before January 1, 2012. The adjustment for the alcohol and cellulosic biofuel fuels credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2328.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.10(422) Exclusion of interest or dividends.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.11(422) Two-earner married couple deduction.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.12(422) Income from partnerships or limited liability companies.** Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

**701—40.13(422) Subchapter “S” income.** Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation’s income to the shareholders, the corporation’s income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident and nonresident shareholders shall report their share of the corporation’s net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission*, 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

**701—40.14(422) Contract sales.** Interest derived as income from a land contract is intangible personal property and is assignable to the recipient's domicile. Gains received from the sale or assignment of land contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 701—40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the \$1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same \$3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to \$1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than \$1,500 and the other spouse has a capital loss greater than \$1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the \$3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of \$3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a \$3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of \$3,000, which was the maximum loss they could claim, although they had aggregate capital losses of \$8,000. The husband had a net capital loss of \$6,000 and the wife had a net capital loss of \$2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of \$1,500, since each spouse had a capital loss of up to \$1,500. The husband had a net capital loss carryover of \$4,500 and the wife had a net capital loss carryover of \$500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of \$2,500. The husband had a net capital gain of \$7,500 and the wife had a net capital loss of \$10,000. The wife claimed a net capital loss of \$10,000 on her separate Iowa return, while the husband reported a net capital gain of \$7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of \$3,000. The wife had a net capital loss of \$800 and the husband had a net capital loss of \$2,500. The wife claimed a \$800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of \$2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of \$300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the

unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

**40.15(1)** *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

**40.15(2)** *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

*a.* Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

*b.* Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

**40.15(3)** *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

*a.* Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

*b.* Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

**40.15(4)** *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs "a" or "b" of this subrule and consideration of paragraphs "c," "d," and "e" of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

*a.* Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have

currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

*b.* Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

*c.* Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

*d.* Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

*e.* Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 8356B, IAB 12/2/09, effective 1/6/10]

**701—40.16(422) Income of nonresidents.** Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 701—40.14(422).

**40.16(1)** *Nonresidents exempt from paying tax.* See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph “c,” and 701—subrule 39.5(11), paragraph “b,” do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

**40.16(2)** *Compensation for personal services of nonresidents.* The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 701—40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation

is subject to review and change by the director. However, pursuant to federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a merchant marine company, or a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

**40.16(3)** *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

**40.16(4)** *Apportionment of business income from business carried on both within and without the state.*

*a.* If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

*b.* The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

*c.* Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

*d.* If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

**40.16(5)** *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.5(422):

**EXAMPLE A** - An Illinois resident is a laborer at a factory in Davenport. A \$50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn \$600 in interest income from the Iowa credit union account in 1983. The interest income would not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

**EXAMPLE B** - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn \$200 in interest income from the checking account in 1982. The plumber will have a net income of \$25,000 from the plumbing business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

EXAMPLE C - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn \$1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

EXAMPLE D - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

EXAMPLE E - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

EXAMPLE F - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn \$550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

EXAMPLE G - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state.

**40.16(6)** *Distributive shares of nonresident partners.* When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

**40.16(7)** *Interest and dividends from government securities.* Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

**40.16(8)** *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the

Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

**40.16(9)** *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

*a. Capital gains from sales or exchanges of stock in C corporations and S corporations.* When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

*b. Capital gains from sales or exchanges of interests in partnerships.* When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or "sourced" at the situs of the partnership's activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com'n.*, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the

partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph "a" of this subrule.

*c. Capital gains from sales or exchanges of sole proprietorships.* When a nonresident sells or exchanges the individual's interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

*d. Capital gains from sales or exchanges of interests in limited liability companies.* Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph "b" of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph "a" of this subrule.

*e. Taxation of corporate liquidations.* As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder's pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review*, 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder's basis in the stock. *Id.* Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder's liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

*f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity.* In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs "a" through "e" of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of the portion of net capital losses that exceed \$3,000.

**40.16(10) Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities.** Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital

gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9103B**, IAB 9/22/10, effective 10/27/10]

**701—40.17(422) Income of part-year residents.** A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.

2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

**701—40.18(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

**40.18(1) Treatment of federal income taxes.**

a. Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

(3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

b. Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

**40.18(2) Nonresidents doing business within and without Iowa.** If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 701—40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

**40.18(3) Loss carryback and carryforward.** The net operating loss attributable to Iowa as determined in rule 701—40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred

by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

**40.18(4) *Loss not applicable.*** No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

**40.18(5) *Special adjustments applicable to net operating losses.*** Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

**40.18(6) *Distinguishing business or nonbusiness items.*** In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

**40.18(7) *Examples.*** The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

Gross income from retail sales business	\$125,000
Interest income from federal securities	2,000
Salary from part-time job	12,500

Individual A's federal return showed the following deductions:

Business deductions (retail sales)	\$150,000
Itemized (nonbusiness) deductions:	
Interest	\$400
Real estate tax	600
Iowa income tax	800
	\$ 1,800

Individual A paid \$3,000 federal income tax during the year which consisted of \$2,500 federal withholding (business) and a \$500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail Sales	\$125,000	\$125,000
Interest income-federal securities	2,000	2,000
Salary	<u>12,500</u>	<u>12,500</u>
Subtotal	\$139,500	\$139,500
Deductions:		
Business	\$150,000	\$150,000
Itemized deductions	<u>1,800</u>	<u>1,800</u>
(Loss) per federal	<u>(\$ 12,300)</u>	
Computed net operating loss		<u>(\$ 12,300)</u>

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$125,000	\$125,000
Salary	<u>12,500</u>	<u>12,500</u>
Subtotal	\$137,500	\$137,500
Deductions:		
Business	\$150,000	\$150,000
Federal tax deductions	3,000	2,500
Itemized deductions	<u>1,000</u>	<u>-</u>
(Loss) per return	<u>(\$ 16,500)</u>	
Computed Iowa NOL		<u>(\$ 15,000)</u>

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

b. Individual B had the following items of income for the taxable year:

Gross income from restaurant business	\$300,000
Wages	12,000
Business long-term capital gain @100%	1,000
Municipal bond interest (nonbusiness)	1,000
Federal tax refund of prior year taxes	500
Iowa tax refund of prior year taxes	100

Individual B's federal return showed the following deductions:

Business deductions from restaurant	\$333,000
Itemized deductions:	

Interest (nonbusiness)	\$590	
Real estate tax (nonbusiness)	780	
Iowa income tax*	520	
Alimony (nonbusiness)	600	
Union dues (business)	100	2,590
	<u>          </u>	

\*Iowa estimated payments totaled \$220 of which \$70 related to nonbusiness income and \$150 related to business capital gains and business profits. \$300 in Iowa tax was withheld from his wages.

Individual B paid \$2,000 in federal income taxes during the tax year. \$1,500 of this amount was withholding on wages and \$500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500(a)	1,000(a)
Iowa refund	100	100
Subtotal	<u>\$312,600</u>	<u>\$313,100</u>
Deductions:		
Business	\$333,000	\$333,000
Itemized deductions	2,590	575(b)
(Loss) per federal	<u>(\$ 22,990)</u>	
Computed net operating loss		<u>(\$ 20,475)</u>

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of \$100 for union dues, \$450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to \$25. The only nonbusiness income is 25 percent of the \$100 Iowa refund.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500	1,000
Municipal bond interest	1,000	1,000
Federal refund	500	500
Subtotal	<u>\$314,000</u>	<u>\$314,500</u>

Deductions:		
Business	\$333,000	\$333,000
Federal tax	2,000	2,000
Itemized deductions	<u>2,070(c)</u>	<u>1,225(d)</u>
(Loss) per return	<u>(\$ 23,070)</u>	
Computed Iowa NOL		<u>(\$ 21,725)</u>

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of \$100 for union dues and nonbusiness deductions to the extent of nonbusiness income of \$1,125. Nonbusiness income includes \$1,000 of municipal bond interest and 25 percent (\$125) of the federal tax refund.

**40.18(8)** *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

Category	All Source Income	Iowa Source Income
Wages	\$20,000	\$20,000
Interest	5,000	0
Rental income	5,000	5,000
Business loss	(50,000)	(10,000)
Iowa net income (loss)	<u>(\$20,000)</u>	<u>\$15,000</u>

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer’s Iowa source income was not negative. The taxpayer’s all source loss of (\$20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer’s all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of \$1,000 in 1983. The refund was from the taxpayer’s 1981 federal return where the taxpayer’s Iowa income was 20% of the total income. \$2,000 of federal income tax was withheld from the taxpayer’s Iowa wages in 1982. The taxpayer had \$10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in 1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

Category	All Source Income	Iowa Source Income
Wages	\$60,000	\$10,000
Interest	3,000	0
Rental income	5,000	5,000
Farm income loss	(30,000)	(30,000)
Capital gain	2,000	2,000
Total incomes	<u>\$40,000</u>	<u>(\$13,000)</u>

The taxpayer’s Iowa source loss of (\$13,000) was decreased by \$200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by \$3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of \$2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer’s itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

Iowa source net loss . . . . .	(\$13,000)
Iowa portion of federal refund . . . . .	200
Federal tax withheld on Iowa wages . . . . .	(2,000)
Capital gain deduction . . . . .	<u>3,000</u>
Total	<u>(\$11,800)</u>

The taxpayer’s net operating loss deduction available for carryback/carryforward to another tax year is (\$11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph “a” and paragraph “b” below:

a. *Application of net operating losses to tax years beginning prior to January 1, 1982.* In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on

or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of (\$15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was \$14,000. The taxpayer had a net capital loss of \$3,000 in 1979. Because the taxpayer's 1979 taxable income of \$14,000 was \$1,000 less than the NOL deduction, the taxable income was increased by \$1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

*b. Application of net operating losses to tax years beginning on or after January 1, 1982.* In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of \$11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

Category	All Source Income	Iowa Source Income
Wages	\$ 60,000	\$ 20,000
Interest	3,000	0
Rental income	10,000	3,000
Farm income	25,000	25,000
Capital gain	2,000	2,000
Net operating loss carryforward	—	(11,800)
Iowa net income	\$100,000	\$ 38,200

The Iowa source income of \$38,200 after reduction by the NOL carryforward is divided by the all source income of \$100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of \$7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of \$4,551. This credit is \$869 greater than the nonresident/part-year credit of \$3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

**40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming.** Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

**701—40.19(422) Casualty losses.** Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

**701—40.20(422) Adjustments to prior years.** When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

**701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed \$20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs “f” and “g,” apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

**40.21(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**40.21(2)** The term “small business” means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

*a.* The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. The small business shall not have more than \$1 million in annual gross revenues, or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

#### **40.21(3) Definitions.**

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

*f.* The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

*g.* The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**40.21(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**40.21(5)** The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

**40.21(6)** If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2247.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0337C, IAB 9/19/12, effective 10/24/12]

#### **701—40.22(422) Disability income exclusion.**

**40.22(1)** Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of \$100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

**40.22(2)** In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude \$5,200 of income received on account of disability.

**40.22(3)** There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer’s federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds \$15,000. In the case of a married couple, both spouses’ incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds \$15,000. The taxpayers’ disability income exclusion is eliminated when the taxpayers’ federal adjusted gross income is equal to or exceeds \$20,200. The deduction of the taxpayers’ disability income exclusion because the taxpayers’ federal adjusted gross income is greater than \$15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received \$8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was \$2,500 and the wife's income was \$7,500.

Of the \$8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only \$4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is \$100.

However, the \$4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds \$15,000. In this example, the taxpayer's federal adjusted gross income is \$18,000, which exceeds \$15,000 by \$3,000. Therefore, the amount eligible for exclusion of \$4,000 must be reduced by \$3,000. This gives the taxpayers an exclusion of \$1,000.

**40.22(4)** For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

**40.22(5)** Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

**40.22(6)** The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

**701—40.23(422) Social security benefits.** For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

**40.23(1)** *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received \$6,000 in social security benefits and the wife received \$3,000 in social security benefits. \$2,000 of the social security benefits was taxable on the federal return.

The \$2,000 in taxable social security benefits is allocated to the spouses on the following basis:

$$\begin{array}{r} \text{Husband} \\ \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

In situations where taxpayers have received both social security benefits and Tier 1 railroad retirement benefits and are taxable on a portion of those benefits, the formula which follows should be used to determine the social security benefits to be included in net income:

$$\begin{array}{r} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{r} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{r} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

**40.23(2)** *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: (a) \$32,000 if married and a joint federal return was filed, (b) \$0 if married and separate federal returns were filed by the spouses and (c) \$25,000 for individuals who filed federal returns and used a filing status other than noted in (a) and (b).

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse any time in 1994). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040. 11. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

**40.23(3)** *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

Calendar years 2007 and 2008	32%
Calendar year 2009	43%
Calendar year 2010	55%
Calendar year 2011	67%
Calendar year 2012	77%
Calendar year 2013	89%

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse anytime during the year). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10. 11. \_\_\_\_\_
12. Multiply line 11 by applicable exclusion percentage. 12. \_\_\_\_\_
13. Taxable social security benefits. Subtract line 12 from line 11. 13. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

**40.23(4)** *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and

701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

**701—40.24(99E) Lottery prizes.** Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

**701—40.25(422) Certain unemployment benefits received in 1979.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.26(422) Contributions to the judicial retirement system.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.27(422) Incomes from distressed sales of qualifying taxpayers.** For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

**40.27(1) Qualifications that must be met for transactions to be considered distressed sales.** There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

*a.* The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

*b.* Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

*c.* The taxpayer's net worth at the end of the tax year was less than \$75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

**40.27(2) Losses from distressed sale transactions of qualifying taxpayers.** Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that

the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

**701—40.28(422) Losses from passive farming activities.** Rescinded IAB 2/18/04, effective 3/24/04.

**701—40.29(422) Intangible drilling costs.** For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

**701—40.30(422) Percentage depletion.** For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.31(422) Away-from-home expenses of state legislators.** For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax.** For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry.** For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of \$20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

**701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans.** For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

**701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program.** Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

**701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board.** Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

**701—40.38(422) Capital gain deduction or exclusion for certain types of net capital gains.** For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(2) to 40.38(8) are excluded in the computation of net income for qualified individual taxpayers. This includes net capital gains from the sales of real property, sales of assets of a

business entity, sales of certain livestock of a business, sales of timber, liquidation of assets of certain corporations, and certain stock sales which are treated as acquisition of assets of a corporation. "Net capital gains" means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. A business includes any activity engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. Subrule 40.38(1) describes the criteria for material participation which are required for the exclusion of certain capital gains related to the sale of real property and the sale of assets of business entities. Subrule 40.38(9) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

**40.38(1)** *Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged.* If the taxpayer has regular, continuous and substantial involvement in the operations of a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the federal tax regulations for material participation in 26 CFR §1.469-5 and §1.469-5T, for the ten years prior to the date of the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether a particular taxpayer has material participation in a business, participation of the taxpayer's spouse in a business must also be taken into account. The spouse's participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer or if the spouse has no ownership interest in the business. The activities of other family members, employees, or consultants are not attributed to the taxpayer to determine material participation.

*a.* Work done in connection with an activity shall not be treated as participation in the activity if such work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

*b.* Work done in an activity by an individual in the individual's capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual's own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.

*c.* A taxpayer is most likely to have material participation in a business if that business is the taxpayer's principal business. However, for purposes of this subrule, it is possible for a taxpayer to have had material participation in more than one business in a tax year.

*d.* A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are conducted. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business. The fact that the taxpayer utilizes employees or contracts for services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business, but the services will not be attributed to the taxpayer.

*e.* Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

(1) The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in 2001 in Altoona, Iowa. In 2011, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in 2011.

(2) The individual's participation in the business constitutes substantially all of the participation of all individuals in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives

the truck. In the winter of 2011, there was little snow so Mr. McKee spent only 20 hours in 2011 clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in 2011.

(3) The individual participates in the business for more than 100 hours in the tax year, and no other individual spends more time in the business activity than the taxpayer.

(4) The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses, and the participation is not material participation within the meaning of one of the tests in subparagraphs 40.38(1)“e”(1) to (3) and (5) to (7). Thus, the taxpayer is regarded as materially participating in each of the businesses.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In 2011, Mr. Evans spent 400 hours working at the restaurant and 150 hours at the record store and other individuals spent more time in the business activity than he did. Mr. Evans is treated as a material participant in each of the businesses in 2011.

(5) An individual who has materially participated (determined with regard to subparagraphs 40.38(1)“e”(1) to (4)) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in 2008 after 35 years in the business. Since Joe’s retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through 2013 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of 2013, the sale will qualify for the Iowa capital gain deduction on Joe’s 2013 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

(6) An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but he retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal service activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

(7) An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following applies: any person other than the taxpayer is compensated for management services, or any person provides more hours of management services than the taxpayer.

*f.* The following paragraphs provide clarification regarding material participation:

(1) A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer’s retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of the last eight years prior to retirement or disability. The farmer must be receiving old-age benefits under Title II of the Social Security Act to be considered a retired farmer.

EXAMPLE. Fred Smith was 80 years old in 2011 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in 2001 when he began receiving old-age benefits under Title II of the Social Security Act. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to

have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

(2) A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting). However, if the surviving spouse was retired at the time of the farmer's death and the deceased spouse materially participated in the farming activity for five of the last eight years prior to the deceased spouse's retirement, then the surviving spouse is deemed to be materially participating, even if the surviving spouse did not actively participate in the farming activity. See IRS Technical Service Memorandum 200911009, March 13, 2009.

(3) Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in subparagraphs 40.38(1) "e"(1), (5) and (6) above as if the taxpayer were not a limited partner for the tax year.

(4) Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.

(5) Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:

TEST 1. The landlord does any three of the following: (1) Pays or is obligated to pay for at least half the direct costs of producing the crop; (2) Furnishes at least half the tools, equipment, and livestock used in producing the crop; (3) Consults with the tenant; and (4) Inspects the production activities periodically.

TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

(6) Conservation reserve payments (CRP). Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an "annualized rental payment." Although the CRP payments are referred to as "rental payments," the payments are considered to be receipts from farm operations and not rental payments from real estate.

If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities and the individual is paying self-employment tax, the owner will be considered to have had material participation in the farming activity.

(7) Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(2), the general rule is that a taxpayer may have material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in subparagraphs 40.38(1) "f"(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code. Rental activity or rental business does not typically involve day-to-day involvement since gross income from this activity represents amounts paid mainly for the use of the property. Examples of qualifying involvement in operations of the property that are considered material participation activities if performed on a regular, continuous and substantial basis include advertising, interviewing potential tenants, preparing leases, collecting rent, handling security deposits, receiving questions and complaints from tenants, and performing routine maintenance.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1998 and has received rental income from these duplexes since 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in operating, managing and maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in operating, managing and maintaining the duplexes. The duplexes are sold in 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2011 Iowa return since he met the material participation requirements for this rental activity.

(8) Like-kind exchanges and involuntary conversions. Material participation can be tacked on in cases of replacement property acquired under a like-kind exchange under Section 1031 of the Internal Revenue Code or an involuntary conversion under Section 1033 of the Internal Revenue Code.

EXAMPLE. Dustin James owned Farm A, and he materially participated in the operation of Farm A for 10 years. Mr. James executed a like-kind exchange for Farm B, and he materially participated in the operation of this farm for 4 years until he retired. Mr. James sold Farm B 2 years after he retired. Although he only materially participated in the operation of Farm B for 4 of the last 8 years before he retired, the operation of Farm A can be tacked on for purposes of the material participation test. Mr. James meets the material participation test since he participated in farming activity for the last 14 years before he retired.

(9) Record-keeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met. However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

**40.38(2) Net capital gains from the sale of real property used in a business.** Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent that the owner had held the real property in the business for ten or more years and had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1). It is not required that the property be located in Iowa for the owner to qualify for the deduction.

*a.* Meaning of the term “held” for purposes of this rule. For capital gains reported for tax years ending prior to January 1, 2006, the term “held” is defined as “owned.” *James and Linda Bell*, Decision of the Administrative Law Judge, Docket No. 01DORF013, January 15, 2002, and *David V. and Julie K. Gorsche v. Iowa State Board of Tax Review*, Case No. CVCV 8379, Polk County District Court, May 5, 2011. Therefore, the property held by the taxpayer must have been owned by the taxpayer for ten or more years to meet the time held requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term “held” is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant to Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the time held requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

*b.* Sale to a lineal descendant. For purposes of taxation of capital gains from the sale of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(3).

*c.* In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is,

if the owner of the business had held and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

*d.* Installments received in the tax year from installment sales of businesses are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years at the time of the sale in 2007.

*e.* Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction except under the specific circumstances of a liquidation described in subrule 40.38(7).

*f.* Capital gains from the sale of real property held for ten or more years for speculation but not used in a business do not qualify for the capital gain deduction.

*g.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and held ABC Company for more than ten years at the time that 500 acres of the land were sold for a capital gain of \$100,000 in 2011. The capital gain recognized in 2011 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and time held requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company, which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1990. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 2011, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the capital gain passed through to John Smith and \$25,000 of the capital gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time held and material participation requirements. John Smith could not exclude the \$25,000 capital gain since, although he had met the time held requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for a taxpayer's sale of real estate from a business to a lineal descendant of the taxpayer as is described for the sale of business assets in subrule 40.38(3).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been held for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 2004 and farmed that land until the land was sold in 2011 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 2005, formed an S corporation, and included the land

in the assets of the S corporation. The land was sold in 2011 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized from the land sale a capital gain of \$15,000, which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had held the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because, although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and in which he had materially participated for 20 years. There were two tracts of farmland in the farming business. In 2011, he sold one tract of farmland in the farming business that he had held for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 2011 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey held the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain deduction. The deduction is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain deduction since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son Joseph after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 1994, when Ralph died. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain deduction under Iowa law since he materially participated for ten or more years and the capital gain was reported for a tax year ending on or after January 1, 2006.

**40.38(3)** *Net capital gains from the sale of assets of a business by an individual who had held the business for ten or more years and had materially participated in the business for ten or more years.* Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent that the individual had held the business for ten or more years and had materially participated in the business for ten or more years. In addition to the time held and material participation qualifications for the capital gain deduction, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

a. For purposes of this subrule, the phrase "substantially all of the tangible personal property or the service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the

sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

b. If the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. If the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten or more years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten or more years prior to the sale of the assets of the business.

c. In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

d. For the purposes of this subrule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, a retail business, or a service business, such as a law firm or an accounting firm.

e. When the business held by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer is not required to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income. The term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

f. In situations in which substantially all of the tangible personal property or the service of the business was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had held the business for ten or more years and had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale. The criteria for material participation in a business may be found in subrule 40.38(1).

g. Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if, at the time of the sale in 2007, the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years.

h. Sale of capital stock of a corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain deduction, whether the corporation is a C corporation or an S corporation.

i. Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain deduction. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

j. The sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the business or unless the activity or distinct part of a business represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, nonunitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exclusion of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

*k.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 2011, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 2011 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 2011, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had held the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 2011 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 2011 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. At the time of sale, the trucks were valued at \$30,000, which was about 10 percent of the fair market value of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 2011 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop that were in the same building and were part of a sole proprietorship owned only by Mr. Bennet, who had held and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 2011 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 2011 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 2011 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which owned a chain of six gas stations in an Iowa city. In 2011, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain of \$30,000 from the sale. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 2011 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year time held and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had held both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records.

In 2011, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 2011 because the cafe and fast-food restaurant were considered to be separate and distinct nonunitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2008, Mr. Jackson transferred 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust was reported on Mr. Jackson's individual income tax return. In 2011, the assets of Jackson Products Corporation were sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

**40.38(4)** *Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sales of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes qualify for the capital gain deduction if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

*a.* Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR §1.1231-2.

*b.* In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

*c.* Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes, are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

*d.* Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

*e.* A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. Gross income from farming or ranching includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. Gross income from farming or ranching also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 2011 tax year, gross income from farming or ranching includes the total of the amounts from line 9 or line 50 of Schedule F and line 7 of Form 4835, Farm Rental Income and Expenses, plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, dairy, or sporting purposes, as shown on Form 4797, Sale of Business Property. In the case of an individual's returns for tax years beginning after 2011, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the

previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses will be considered for the capital gain deduction.

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether the taxpayers received more than half of their gross income from farming or ranching. However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether that spouse has more than 50 percent of gross income from farming or ranching operations.

EXAMPLE. Bob Deen had a cattle operation that owned black angus cattle in the operation for breeding purposes. In 2011, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 2011 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

**40.38(5)** *Net capital gains from sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months from the date of acquisition qualify for the capital gain deduction, if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, or reptiles. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR §1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(4).

*a.* The procedure in subrule 40.38(4) for determining whether more than one-half of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

*b.* In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held for 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer is not required to have more than one-half of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain deduction.

*c.* Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains meet the qualifications for the deduction on the basis of having more than one-half of the gross income in the tax year from farming or ranching operations.

*d.* Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

**40.38(6)** *Net capital gains from sales of timber held by the taxpayer for more than one year.* Capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gain deduction. In all of the following examples of circumstances where gains from sales of timber qualify for capital gain treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, cross ties, and other wood products. Timber eligible for the capital gain deduction does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer

owned or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 2011	\$400,000
Adjusted basis for depletion	– \$100,000
Capital gain on cutting of timber	\$300,000

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

*a.* Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term “evergreen trees” is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer’s farm, there is no sale until the tree is cut. However, evergreen trees sold in a live state do not qualify for capital gain treatment.

*b.* Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber. Additional information about gains and losses from the sale of timber is included under 26 CFR §1.631-1 and §1.631-2.

*c.* Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain deduction.

*d.* Capital gains from the sale of timber by a C corporation do not qualify for the capital gain deduction.

**40.38(7)** *Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes.* Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain deduction. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

**40.38(8)** *Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes.* Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had held an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. The burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

**40.38(9)** *Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried.* The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

a. The capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 2011 return showing a net loss of \$12,000. On this return, Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding livestock, other than cattle or horses, held for 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 2011 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 2011 is \$9,000.

b. In the case of net operating losses which are carried back to a tax year where the taxpayer has claimed the capital gain deduction, the capital gain deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 2011. Mr. Brown elected to carry back the net operating loss to his 2009 Iowa return. The 2009 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 2011 was applied to an income of \$30,000 for the carryback year.

**40.38(10) Sale of employer securities to an Iowa employee stock ownership plan.** For tax years beginning on or after January 1, 2012, 50 percent of the net capital gain from the sale or exchange of employer securities of an Iowa corporation to a qualified Iowa employee stock ownership plan (ESOP) may be eligible for the Iowa capital gain deduction. To be eligible for the capital gain deduction, the qualified Iowa ESOP must own at least 30 percent of all outstanding employer securities issued by the Iowa corporation after completion of the transaction.

a. Definitions. The following definitions apply to this subrule:

“*Employer securities*” means the same as defined in Section 409(l) of the Internal Revenue Code. “*Employer securities*” includes common stock issued by the employer and preferred stock if the provisions of Section 409(l)(3) of the Internal Revenue Code are met.

“*Iowa corporation*” means a corporation whose commercial domicile, as defined in Iowa Code section 422.32, is in Iowa. A limited liability company is not considered an Iowa corporation.

“*Qualified Iowa ESOP*” means an employee stock ownership plan, as defined in Section 4975(e)(7) of the Internal Revenue Code, and trust that are established by an Iowa corporation for the benefit of the employees of the corporation.

b. The material participation requirements set forth in subrule 40.38(1) do not apply for the sale of employer securities to an Iowa ESOP. In addition, the holding period requirements set forth in paragraph 40.38(2)“a” do not apply for the sale of employer securities to an Iowa ESOP.

This rule is intended to implement Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2465, division XII.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0073C, IAB 4/4/12, effective 5/9/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1303C, IAB 2/5/14, effective 3/12/14]

**701—40.39(422) Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system.** Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the E911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

**701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield.** For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies

to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

**701—40.41(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.42(422) Depreciation of speculative shell buildings.**

**40.42(1)** For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

**40.42(2)** On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**40.42(3)** For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27) "c."

This rule is intended to implement Iowa Code section 422.7.

**701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative.** Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2) "a"(2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver's family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives who are related by marriage or adoption. Those licensed health care professionals who are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, audiologists, and other similar licensed health care professionals.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—40.44(422,541A) Individual development accounts.** Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

**40.44(1) Exemption of additions to individual development accounts.** The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

*a.* The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

**40.44(2)** *Additions to net income for withdrawals from individual development accounts.* Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

**701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa.** For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

**40.45(1) Definitions.**

a. The word “beneficiary” means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

b. The term “individual’s documented retirement” means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual’s beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual’s retirement may include: copies of birth certificates or driver’s licenses to establish an individual’s age; copies of excerpts from an employer’s personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual’s disability which could have contributed to a person’s retirement.

c. The term “nonresident” applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

**40.45(2) Examples:**

a. John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

b. Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John’s pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father’s pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

c. Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn’t have a documented retirement.

d. William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

e. Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown’s retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

**701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams.** Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual’s total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has \$50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, \$5,556 of the compensation would be taxable to Iowa ( $\$50,000 \times 20/180 = \$5,556$ ).

The following subrules include definitions, examples, and other information which clarify Iowa’s taxation of nonresident members of professional athletic teams:

**40.46(1) Definitions.**

a. The term “professional athletic team” includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

b. The term “member of a professional athletic team” includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and

perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

c. The term “total compensation for services rendered as a member of a professional athletic team” means the total compensation received during the taxable year for services rendered. “Total compensation” includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, “bonuses” included in “total compensation for services rendered as a member of a professional athletic team” subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or “bowl” games played by a team, or for the member’s selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

d. Except as provided in subparagraphs (4) and (5) of this paragraph, the term “duty days” means all days during the taxable year from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional “caravans”). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach’s total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

**40.46(2)** *Filing composite Iowa returns for nonresident members of professional athletic teams.* Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than \$1,000. See rule 701—48.1(422) about filing Iowa composite returns.

**40.46(3)** *Examples of taxation of nonresident members of professional athletic teams.*

*a.* Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

*b.* Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

*c.* Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

*d.* Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

*e.* Assume the same facts as given in paragraph "d," except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the

game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

**40.46(4)** *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to 6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.8(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.** For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses. See rule 701—40.80(422) for the exclusion of military retirement pay for tax years beginning on or after January 1, 2014.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received \$95,000 in retirement benefits and the husband received \$5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the \$10,000 retirement income exclusion or a retirement income exclusion

of \$9,500. The husband would be entitled to 5 percent of the \$10,000 retirement income exclusion or an exclusion of \$500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had \$15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire \$10,000 retirement income exclusion to exclude \$10,000 of his pension benefits since the spouse did not use any of the \$10,000 retirement income exclusion for the tax year.

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to \$3,000 for single individuals, up to \$3,000 for each married person filing a separate Iowa return, up to \$3,000 for each married person filing separately on the combined return form, and up to \$6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had \$2,000 in pension income that could be excluded, since the pension income was \$3,000 or less. The other spouse had \$6,000 in pension income and could exclude \$3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional \$1,000 of the up to \$3,000 retirement income exclusion that was not used by the other spouse.

“*Insurable interest*” is a term used in life insurance which also applies to this rule and is defined to be “such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life.” *Warnock v. Davis*, 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams’ Adm’r v. Reed*, Ky., 36 S.W. 568, 570; *Trinity College v. Travelers’ Co.*, 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel*, 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis*, 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term “insurable interest” will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term “survivor” is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle's pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle's death.

If a grandson was receiving college tuition regularly from his grandfather and received the grandfather's pension as a beneficiary of the grandfather after the grandfather's death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.

A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.

There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person's life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.

Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.

For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered

as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.

Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below \$9,000, or below \$18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below \$24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7.  
[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.48(422) Health insurance premiums deduction.** For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

**701—40.49(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying

minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

**701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans.** For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of \$41,000 or more in 1995, that person would have made posttax contributions to IPERS of \$1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The \$1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the \$1,517 IPERS contribution made in 1995. However, this employee will not be subject to state income tax on the portion of the IPERS benefits received which is attributable to the \$1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

**40.50(1) Definitions related to state taxation of benefits from state pension plan.** The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

a. For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

b. For purposes of this rule, “member” is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

c. For purposes of this rule, “beneficiary” is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

d. For purposes of this rule, the term “IPERS” means the Iowa public employees retirement system.

e. For purposes of this rule, the term “pretax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means a contribution to a state pension plan that is not taxed on the employee’s income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee’s employer and not by the employee so this contribution is not part of the employee’s basis in the pension that is not taxed when the pension is received.

f. For purposes of this rule, the term “posttax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means the contribution is included in the employee’s taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee’s basis in the pension which is not taxed at the time the pension is received.

**40.50(2)** *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal income tax on the benefits to the extent of the pensioner’s or member’s recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

**40.50(3)** *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee’s contribution to the pension for federal income tax purposes, and the employee’s contribution to the pension for state income tax purposes. In situations where the employee’s contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual’s employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee’s state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member’s posttax contribution or basis in the pension for federal tax purposes is divided by the member’s posttax contribution or basis

in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

**40.50(4) Examples.**

*a.* A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received \$1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was \$1,690.36. The employee's federal posttax contribution or basis in the pension was \$4,907 and the state posttax contribution or basis was \$7,194. The nontaxable amount of the IPERS benefits for federal income tax was \$104.09 which was calculated by subtracting the federal taxable amount of \$1,690.36 from the gross amount of the benefits of \$1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing \$4,907 by \$7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of \$104.09 was then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of \$152.60. This was the nontaxable amount of the pension for state income tax purposes. When \$152.60 is subtracted from the gross benefits of \$1,794.45 paid in the year, the remaining amount is \$1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

*b.* A state employee retired in July 1995. The retired employee received \$1,881.88 in IPERS benefits in 1996 and \$1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was \$3,130 and the posttax contribution for state income tax purposes was \$3,821. The amount of benefits not taxable for federal income tax purposes was \$91.28 which was computed by subtracting the amount of pension benefits of \$1,790.60 that was taxable on the federal income tax return from the gross benefits of \$1,881.88 received in 1996. The retiree's federal posttax contribution of \$3,130 to IPERS was divided by the retiree's posttax contribution of \$3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount of IPERS benefits of \$91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of \$111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. \$111.44 is subtracted from the gross benefits of \$1,881.88 received in 1996 which leaves the state taxable amount for 1996 of \$1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

**701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area.** For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

**701—40.52(422) Mutual funds.** Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.

2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.

3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

**701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted.** The Iowa educational savings plan trust was created so that individuals can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover future higher education costs of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted.

**40.53(1) Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.** Effective with contributions made on or after July 1, 1998, an individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states' educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

For example, an individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000

contributions to the trust on behalf of each of the ten grandchildren. When the participant files the 1998 Iowa individual income tax return, the participant can claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual's ten grandchildren.

**40.53(2)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary's account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

**40.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* If a participant cancels a beneficiary's account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary, or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses, the refund of the funds is to be included in net income on the participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

For example, because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of \$4,200 of funds in the beneficiary's account. Because \$4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, \$4,000 in contributions that had been deducted on the participant's Iowa returns for 1998 and 1999.

**40.53(4)** *Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.* To the extent that the contribution was not deductible for federal income tax purposes, an individual can deduct on the Iowa individual income tax return a gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 923.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.54(422) Roth individual retirement accounts.** Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

**40.54(1)** *Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs.* At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized \$20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion

income was taxed in 1998, \$5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 701—40.47(422).

**40.54(2) Roth IRA conversion income for part-year residents.** To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had \$20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the \$20,000 in conversion income is allocated to Iowa. Thus, \$12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

**701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims.** For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

**701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions.** For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

**701—40.57(422) Installment sales by taxpayers using the accrual method of accounting.** For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the

transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for \$200,000 which resulted in a capital gain of \$50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported \$12,500 of the gain on his 2001 federal return and will report capital gains of \$12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of \$50,000 from the land sale. Although Taxpayer Jones must report a capital gain of \$12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of \$12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of \$50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for \$500,000 which resulted in a capital gain of \$100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported \$20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report \$20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

**701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States.** For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to national guard duty or federal active duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve member who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2097.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate.** Rescinded ARC 1137C, IAB 10/30/13, effective 12/4/13.

**701—40.60(422) Additional first-year depreciation allowance.**

**40.60(1) Assets acquired after September 10, 2001, but before May 6, 2003.** For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost

recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

**40.60(2)** *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

*b.* If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**40.60(3)** *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost

recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

**40.60(4) *Qualified disaster assistance property.*** For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**40.60(5) *Assets acquired after December 31, 2009, but before January 1, 2014.*** For tax periods beginning after December 31, 2009, but beginning before January 1, 2014, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, Public Law No. 111-312, Section 401, and Public Law No. 112-240, Section 331, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2014, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2014, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2013 Iowa Acts, Senate File 106.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.** For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay

received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered by military orders for one of the operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve.** A taxpayer may subtract, in computing net income, the costs not reimbursed that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

**701—40.63(422) Exclusion of income from military student loan repayments.** Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty.** An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.65(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa individual income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa individual income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa individual income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa individual income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa individual income tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, Public Law No. 111-312, Section 402, and Public Law No. 112-240, Section 315, may be taken for Iowa individual income tax.

**40.65(1)** If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between the federal Section 179 expensing allowance and the Iowa Section 179 expensing allowance. Taxpayer now elects to take the increased Section 179 expensing allowance for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

**40.65(2)** If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to \$25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2013 Iowa Acts, Senate File 106.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant.** For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to \$10,000 in unreimbursed expenses that were incurred relating to the taxpayer's donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

**701—40.67(422) Deduction for alternative motor vehicles.** For tax years beginning on or after January 1, 2006, but beginning before January 1, 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. The advanced lean burn technology, qualified hybrid and qualified alternative fuel vehicles must be placed in service before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.68(422) Injured veterans grant program.**

**40.68(1)** For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to \$10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

**40.68(2)** For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

**701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain.** For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms “threat” and “imminence,” and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

**40.69(1) Reporting requirements.** In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes.** For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

**701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects.**

**40.70(1) Projects registered on or after January 1, 2007, but before July 1, 2009.** For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.37(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.37(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

**40.70(2) *Projects registered on or after July 1, 2009.*** For tax years beginning on or after July 1, 2009, a taxpayer who is a resident of Iowa may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa individual income tax return for each of the tax years 2010-2013.

**40.70(3) *Repeal of exclusion.*** The exclusion of income from the sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects is repealed for tax years beginning on or after January 1, 2012. However, the exclusion is still available if the contract or agreement related to a film project was entered into on or before May 25, 2012. Assuming the same facts as those in the example in subrule 40.70(2), the taxpayer can continue to exclude \$2,500 of income on the Iowa individual income tax return for the 2012 and 2013 tax years since the contract or agreement was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2337, section 33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12]

**701—40.71(422) Exclusion for certain victim compensation payments.** Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.
2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.
3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

**701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.**

**40.72(1)** For tax years beginning on or after January 1, 2007, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict

veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

**40.72(2)** For tax years beginning on or after January 1, 2008, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs. Bonuses of up to \$500 are awarded to veterans who were inducted into active duty service from the state of Iowa, who served on active duty in the United States armed forces between July 1, 1958, and May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2038.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents.** Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

**40.73(1) Term of coverage.** Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

**40.73(2) Federal treatment.** Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.74(422) Exclusion for AmeriCorps Segal Education Award.** Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund.** For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted

gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

[ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard.** For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

**40.76(1)** Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

*a.* Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.

*b.* Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.

*c.* Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

**40.76(2)** Military personnel who do not qualify for the exclusion include the following:

*a.* Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.

*b.* Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.

*c.* Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.

*d.* Other members of the national guard who do not receive pay from the federal government.

**40.76(3)** Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

**40.76(4)** Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.77(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—40.78(422) Allowance of certain deductions for 2008 tax year.**

**40.78(1)** For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

**40.78(2)** Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations, the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.79(422) Special filing provisions related to 2010 tax changes.**

**40.79(1)** For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

**40.79(2)** Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the 2010 tax year to reflect these adjustments or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

*a.* The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

*b.* The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

**40.79(3)** Examples. The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1:** Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010. Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

**EXAMPLE 2:** Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of

\$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

EXAMPLE 3: Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.80(422) Exemption for military retirement pay.** For tax years beginning on or after January 1, 2014, retirement pay received by taxpayers from the federal government for military service performed in the armed forces, armed forces reserves, or national guard is exempt from state income tax. In addition, amounts received by a surviving spouse, former spouse, or other beneficiary of a taxpayer who served in the armed forces, armed forces reserves, or national guard under the Survivor Benefit Plan are also exempt from state income tax for tax years beginning on or after January 1, 2014. The retirement pay is only deductible to the extent it is included in the taxpayer's federal adjusted gross income.

**40.80(1) Coordination with pension exclusion.** The exclusion of retirement pay is in addition to the partial exclusion, provided in rule 701—40.47(422), of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses and survivors. In addition, taxpayers who receive retirement pay under federal law that combines retirement pay for both uniformed service and the federal civil service retirement system or federal employees' retirement system must prorate the retirement pay based on years of service.

EXAMPLE 1: A married individual who is 60 years of age receives \$20,000 of federal retirement pay from military service and \$30,000 in retirement pay from the Iowa public employees' retirement system during the 2014 tax year. The taxpayer can exclude \$20,000 of military retirement pay and \$12,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$32,000 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

EXAMPLE 2: A single taxpayer who is 65 years of age receives \$60,000 as a federal pension during the 2014 tax year. The taxpayer has 20 years of military service and 27 years of civilian employment with the federal government. The military retirement pay portion is \$25,532 (20 years divided by 47 years multiplied by \$60,000). The taxpayer can exclude \$25,532 of military retirement pay and \$6,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$31,532 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

**40.80(2) Coordination with filing threshold and alternate tax.** The military retirement pay is excluded from the calculation of income used to determine whether an Iowa income tax return is required to be filed pursuant to 701—subrules 39.1(1) and 39.5(10) through 39.5(13). In addition, the military retirement pay is excluded from the calculation of the special tax computation for all low-income taxpayers except single taxpayers pursuant to rule 701—39.9(422) and is excluded from the calculation of the special tax computation for taxpayers who are 65 years of age or older under rule 701—39.15(422).

**40.80(3) Iowa withholding.** The amount of military retirement pay is excluded from the calculation of payments used to determine whether Iowa tax should be withheld from pension and annuity payments as determined pursuant to 701—subrule 46.3(4).

This rule is intended to implement Iowa Code sections 422.5 and 422.7 as amended by 2014 Iowa Acts, Senate File 303.  
[ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.81(422) Iowa ABLE savings plan trust.** The Iowa ABLE savings plan trust was created so that individuals can contribute funds on behalf of designated beneficiaries into accounts administered by

the treasurer of state. The funds contributed to the trust may be used to cover future disability-related expenses of the designated beneficiary. The funds contributed to the trust are intended to supplement, but not supplant, other benefits provided to the designated beneficiary by various federal, state, and private sources. The Iowa ABLE savings plan program is administered by the treasurer of state under the terms of Iowa Code chapter 12I. The following subrules provide details about how an individual's net income is affected by contributions to a beneficiary's account, by interest and any other earnings on a beneficiary's account, and by distributions of contributions which were previously deducted.

**40.81(1) Definitions.**

*"Account owner"* means an individual who enters into a participation agreement under Iowa Code chapter 12I for the payment of qualified disability expenses on behalf of a designated beneficiary.

*"Designated beneficiary"* means an individual who is a resident of this state or a resident of a contracting state and who meets the definition of "eligible individual" found in Section 529A of the Internal Revenue Code.

*"Iowa ABLE savings plan trust"* means a qualified ABLE program administered by the Iowa treasurer of state under the terms of Iowa Code chapter 12I.

*"Other qualified ABLE program"* refers to any qualified ABLE program administered by another state with which the Iowa treasurer of state has entered into an agreement under the terms of Iowa Code section 12I.10 (see subrule 40.81(2) below).

*"Qualified ABLE program"* means the same as defined in Section 529A of the Internal Revenue Code.

*"Qualified disability expenses"* means the same as defined in Section 529A of the Internal Revenue Code.

**40.81(2) Contracting with other states.** Iowa Code section 12I.10 allows the treasurer of state to choose to defer implementation of Iowa's own qualified ABLE program and instead enter into an agreement with another state that already has a qualified ABLE program, to provide Iowa residents access to that state's qualified ABLE program, provided that the other state's program meets the qualifications set out in Iowa Code section 12I.10(1).

**40.81(3) Subtraction from net income for contributions made to the Iowa ABLE savings plan trust or other qualified ABLE program.** For tax years beginning on or after January 1, 2016, individuals can subtract from their Iowa net income the amount contributed to the Iowa ABLE savings plan trust or other qualified ABLE program on behalf of a designated beneficiary during the tax year, subject to the maximum contribution level for that year.

**40.81(4) Exclusion of interest and earnings on beneficiary accounts in the Iowa ABLE savings plan trust or other qualified ABLE program.** For tax years beginning on or after January 1, 2016, to the extent that interest or other earnings accrue on an account in the Iowa ABLE savings plan trust or other qualified ABLE program (if the account owner is an Iowa resident), the interest or other earnings are excluded for purposes of computing net income on the designated beneficiary's Iowa individual income tax return.

**40.81(5) Addition to net income of amounts distributed to the participant from the Iowa ABLE savings plan trust or other qualified ABLE program that had previously been deducted.**

*a.* For tax years beginning on or after January 1, 2016, if a taxpayer, as an account owner, cancels the account owner's account in the Iowa ABLE savings plan trust or other qualified ABLE program and receives a distribution of the funds in the account, the amount of the distribution shall be included in net income on the account owner's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the account owner or any other person as a contribution to the Iowa ABLE savings plan trust or other qualified ABLE program.

*b.* For tax years beginning on or after January 1, 2016, if a taxpayer makes a withdrawal of funds previously deducted by the taxpayer or any other person from the Iowa ABLE savings plan trust or other qualified ABLE program for purposes other than the payment of qualified disability expenses, the amount of the withdrawal shall be included in net income on the taxpayer's Iowa individual income tax

return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the taxpayer or any other person.

**40.81(6) *Maximum contribution level.*** The amount of the deduction available for an individual taxpayer each year for contributions on behalf of any one designated beneficiary to the Iowa ABLE savings plan trust or other qualified ABLE program may not exceed the maximum contribution level for that year. The maximum contribution level is set by the treasurer of state. The maximum contribution level is indexed yearly for inflation pursuant to Iowa Code section 12D.3(1)“a.”

This rule is intended to implement Iowa Code section 422.7 as amended by 2015 Iowa Acts, chapter 137.

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◇ Two or more ARCs

CHAPTER 68  
MOTOR FUEL AND UNDYED SPECIAL FUEL  
[Prior to 1/1/96, see 701—Ch 64]

**701—68.1(452A) Definitions.** See 701—67.1(452A).

**701—68.2(452A) Tax rates—time tax attaches—responsible party.**

**68.2(1)** The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through February 28, 2015) 31¢ per gallon (for March 1, 2015, through June 30, 2015) 30.8¢ per gallon (for July 1, 2015, through June 30, 2016) 30.7¢ per gallon (beginning July 1, 2016)
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning July 1, 2016)
E-85 gasoline	17¢ per gallon (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning July 1, 2016)
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)
Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (for March 1, 2015, through June 30, 2015) 29.5¢ per gallon (beginning July 1, 2015)
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015) 5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015) 30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014) 21¢ per gallon (for July 1, 2014, through February 28, 2015) 31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)

**68.2(2) Fuel distribution percentages.**

*a. Ethanol distribution percentage.*

(1) Except as otherwise provided in this paragraph, for March 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the ethanol distribution percentage. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended

gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Ethanol Distribution %</u>	<u>Ethanol Tax</u>	<u>Gasoline Tax</u>
00+/50	29.0	30.0
50+/55	29.0	30.1
55+/60	29.0	30.3
60+/65	29.0	30.5
65+/70	29.0	30.7
70+/75	29.0	31.0
75+/80	29.3	30.8
80+/85	29.5	30.7
85+/90	29.7	30.4
90+/95	29.9	30.1
95+/100	30.0	30.0

(2) Except as otherwise provided in this paragraph, after June 30, 2020, an excise tax of 30 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

*b. Biodiesel distribution percentage.*

(1) Except as otherwise provided in this paragraph, for July 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the biodiesel distribution percentage. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The number of gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles distributed in this state shall be based on the total taxable gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Biodiesel Distribution %</u>	<u>B-11 or Higher Tax</u>	<u>Other Than B-11 or Higher Tax</u>
00/50	29.5	32.5
50+/55	29.8	32.5
55+/60	30.1	32.5
60+/65	30.4	32.5
65+/70	30.7	32.5
70+/75	31.0	32.5
75+/80	31.3	32.5
80+/85	31.6	32.5
85+/90	31.9	32.5
90+/95	32.2	32.5
95+/100	32.5	32.5

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year. Prior to July 1, 2015, Iowa licensees did not separately report the total taxable gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state. Accordingly, the department cannot calculate the biodiesel distribution percentage for calendar years 2014 and 2015 using the method described in subparagraph 68.2(2)“b”(1). However, the best information available to the department indicates the biodiesel distribution percentage is not greater than 50 percent for calendar years 2014 and 2015. Therefore, for the period between July 1, 2015, and June 30, 2016, and for the period between July 1, 2016, and June 30, 2017, the rates for the excise tax on special fuel for diesel engines of motor vehicles are based on a biodiesel distribution percentage of 00/50%.

(3) Except as otherwise provided in this paragraph, for the period between March 1, 2015, and June 30, 2015, and for the period after June 30, 2020, an excise tax of 32.5 cents is imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state.

*c. Legislative review.* The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every six years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding six-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding six-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every sixth year thereafter.

**68.2(3)** The tax attaches when the fuel is withdrawn from a terminal or imported into Iowa. The tax is payable to the department by the supplier, restrictive supplier, importer, blender, or any person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer or any other person who possesses taxable fuel upon which the tax has not been paid. The tax is to be remitted to the department by a supplier, restrictive supplier, or blender by the last day of the month following the month in which the fuel is withdrawn from a terminal or imported. The tax is to be remitted by an importer by the last day of the month for fuel imported in the first 15 days of the month and by the fifteenth day of the following month for fuel imported after the fifteenth day of the previous month. Nonlicensees who possess taxable fuel upon which the tax has not been paid must file returns and pay the tax the same as a restrictive supplier (monthly). All licensees must make payment by electronic funds transfer (see publication 90-201 for EFT requirements).

**68.2(4)** The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 2. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 2.

Beginning January 1, 2006, retailers of E-85 gasoline must file a report with the department by the last day of the month of each calendar quarter for each retail location showing the number of invoiced gallons of E-85 gasoline sold by the retailer in Iowa during the preceding calendar quarter. The report must also include a listing of the vendors providing E-85 gasoline to the retailer and the number of gallons received from each vendor. If the retailer blends E-85 gasoline, the retailer must show the number of gallons of motor fuel (including both gasoline and alcohol) purchased and blended. The report must be signed under penalty for false certificate.

**68.2(5)** Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8 and 452A.85.  
[ARC 8225B, IAB 10/7/09, effective 11/11/09; ARC 0399C, IAB 10/17/12, effective 11/21/12; ARC 1442C, IAB 4/30/14, effective 6/4/14; ARC 1805C, IAB 1/7/15, effective 2/11/15; ARC 2247C, IAB 11/25/15, effective 12/30/15; ARC 2698C, IAB 8/31/16, effective 10/5/16]

**701—68.3(452A) Exemption.** Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this state. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968). See sales tax rule 701—18.37(422,423).

Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17, subsection 1, paragraph “a.” However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

**701—68.4(452A) Blended fuel taxation—nonterminal location.**

**68.4(1) Responsibilities of all blenders at nonterminal locations.** A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender's license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the alcohol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

**68.4(2) Blenders of ethanol blended gasoline.**

a. A blender who owns the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 29¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ( $7,200 \times .30$ ) =	\$2,160.00
Blender adds 800 gallons untaxed alcohol	\$0.00
Total tax paid on products	<u>\$2,160.00</u>
Total tax due on 8,000 gallons ethanol blended gasoline ( $8,000 \times .29$ ) =	\$2,320.00
Additional Amount Due	<u>\$160.00</u>

b. A blender who purchases alcohol and gasoline from a supplier must pay tax on both the alcohol purchased and the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 29¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ( $7,200 \times .30$ ) =	\$2,160.00
Blender purchases 800 gallons tax-paid alcohol ( $800 \times .29$ ) =	\$232.00
Total tax paid on products	<u>\$2,392.00</u>
Total tax due on 8,000 gallons ethanol blended gasoline ( $8,000 \times .29$ ) =	\$2,320.00
Amount of Refund Allowable	<u>\$72.00</u>

c. Ethanol blended gasoline—blending errors.

Where a blending error occurs and an insufficient amount of alcohol has been blended with gasoline so that the mixture fails to qualify as ethanol blended gasoline as defined in Iowa Code section 452A.2, a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the alcohol erroneously blended with gasoline is at least 9 percent of the total blended product by volume, the alcohol and gasoline blended product is considered ethanol blended gasoline and there is no penalty or assessment of additional tax.

(2) If the amount of alcohol erroneously blended with gasoline is less than 9 percent of the total blended product by volume, the total blend of gasoline and alcohol is subject to tax as gasoline at the prevailing rate of tax.

(3) This paragraph applies only if a blender intends to produce ethanol blended gasoline. If a blender does not intend to produce ethanol blended gasoline when blending alcohol and gasoline, and the mixture contains less than 10 percent alcohol by volume, no error has occurred and the mixture is subject to tax as gasoline.

(4) The following formulas are used to compute blending errors:

Actual gasoline + actual alcohol = total gallons of blended product

Total gallons of blended product  $\times$  .09 = required alcohol

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline. Figures are rounded to the nearest whole gallon; ethanol blended gasoline is taxed at \$.29 per gallon; gasoline is taxed at \$.30 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Actual gasoline	=	8,000 gal.
Actual alcohol	=	800 gal.
Total blended product	=	8,800 gal.
$8,800 \times .09$	=	792 gal. required alcohol

The actual alcohol (800 gallons) is more than the required alcohol (792 gallons), which means that the tax is applied according to subparagraph 68.4(2) "c"(1) as follows:

$$8,800 \text{ gal. of blended product} \times \begin{matrix} \\ \$ .29 \end{matrix} = \$2,552 \text{ tax on ethanol blended gasoline}$$

EXAMPLE 2:

Actual gasoline	=	8,010 gal.
Actual alcohol	=	790 gal.
Total blended product	=	8,800 gal.
$8,800 \times .09$	=	792 gal. required alcohol

The actual alcohol (790 gallons) is less than the required alcohol (792 gallons), which means that the entire blend is considered gasoline and the tax is applied according to subparagraph 68.4(2) "c"(2) as follows:

$$8,800 \text{ gal. of blended product} \times \begin{matrix} \\ \$ .30 \end{matrix} = \$2,640 \text{ tax on gasoline}$$

**68.4(3) Blenders of biodiesel blended fuel.**

a. A blender who owns the biodiesel (supplier) being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's

license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

## EXAMPLE 1.

Blender purchases 7,120 gallons tax-paid petrodiesel ( $7,120 \times .325$ ) =	\$2,314.00
Blender adds 880 gallons untaxed biodiesel =	\$0.00
Total tax paid on products =	<u>\$2,314.00</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons blended B-11 or higher ( $8,000 \times .29$ ) =	\$2,320.00
Additional Amount Due =	<u>\$6.00</u>

## EXAMPLE 2.

Blender purchases 7,600 gallons tax-paid petrodiesel ( $7,600 \times .325$ ) =	\$2,470.00
Blender adds 400 gallons untaxed biodiesel =	\$0.00
Total tax paid on products =	<u>\$2,470.00</u>

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ( $8,000 \times .325$ ) =	\$2,600.00
Additional Amount Due =	<u>\$130.00</u>

## EXAMPLE 3.

Blender purchases 7,750 gallons tax-paid B-2 ( $7,750 \times .325$ ) =	\$2,518.75
Blender adds 250 gallons untaxed biodiesel =	\$0.00
Total tax paid on products =	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons ( $155 + 250$ , or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ( $8,000 \times .325$ ) =	\$2,600.00
Additional Amount Due =	<u>\$81.25</u>

*b.* A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

## EXAMPLE 1.

Blender purchases 7,120 gallons tax-paid petrodiesel ( $7,120 \times .325$ ) =	\$2,314.00
Blender purchases 880 gallons tax-paid biodiesel ( $880 \times .29$ ) =	\$255.20
Total tax paid on products =	<u>\$2,569.20</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons blended B-11 or higher ( $8,000 \times .29$ ) =	\$2,320.00
Amount of Refund Allowable =	<u>\$249.20</u>

## EXAMPLE 2.

Blender purchases 7,600 gallons tax-paid petrodiesel ( $7,600 \times .325$ ) =	\$2,470.00
Blender purchases 400 gallons tax-paid biodiesel ( $400 \times .29$ ) =	\$116.00
Total tax paid on products =	<u>\$2,586.00</u>

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons blended B-5 ( $8,000 \times .325$ ) =	\$2,600.00
Additional Amount Due =	<u>\$14.00</u>

## EXAMPLE 3.

Blender purchases 4,000 gallons tax-paid B-2 ( $4,000 \times .325$ ) =	\$1,300.00
Blender purchases 4,000 gallons tax-paid B-20 ( $4,000 \times .29$ ) =	\$1,160.00
Total tax paid on products =	<u>\$2,460.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons B-11 or higher ( $8,000 \times .29$ ) =	\$2,320.00
Amount of Refund Allowable =	<u>\$140.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 10 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 10 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) This paragraph applies only if a blender intends to produce B-11 or higher. If a blender does not intend to produce B-11 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 11 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-11 or higher.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product  $\times$  .1 = required biodiesel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-11 or higher. Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at \$.29 per gallon; diesel other than B-11 or higher is taxed at \$.325 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Actual petrodiesel	=	8,095 gal.
Actual biodiesel	=	905 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (905 gallons) is more than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$9,000 \text{ gal. of blended product} = \$2,610 \text{ tax on B-11 or higher}$$

$$\times \$.29$$

EXAMPLE 2.

Actual petrodiesel	=	8,105 gal.
Actual biodiesel	=	895 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (895 gallons) is less than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(2) as follows:

$$9,000 \text{ gal. of blended product} = \$2,925 \text{ tax on diesel other than B-11 or higher}$$

$$\times \$.325$$

EXAMPLE 3.

A blender erroneously mixes 5,000 gallons of B-2 with 4,500 gallons of B-20 with the intent of creating B-11 or higher. 5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel. 4,500 gallons of B-20 contains 900 gallons (20%) of biodiesel. Thus, the 9,500 gallons (4,500 + 5,000) of blended product includes 1,000 gallons (100 + 900) of biodiesel and 8,500 gallons (9,500 – 1,000) of petrodiesel.

Actual petrodiesel	=	8,500 gal.
Actual biodiesel	=	1,000 gal.
Total blended product	=	9,500 gal.
$9,500 \times .1$	=	950 gal. required biodiesel

The actual biodiesel (1,000 gallons) is greater than the required biodiesel (950 gallons), which means that the entire blend is considered B-11 or higher and the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$\begin{array}{rcl} 9,500 \text{ gal. of blended product} & = & \$2,755 \text{ tax on B-11 or higher} \\ \times \$ .29 & & \end{array}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by 2015 Iowa Acts, Senate File 257.

[ARC 2247C, IAB 11/25/15, effective 12/30/15]

**701—68.5(452A) Tax returns—computations.**

**68.5(1) Supplier—nexus.**

*a.* The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the alcohol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

*b.* If fuel is withdrawn by a supplier with no nexus in Iowa, but who voluntarily agrees to collect and report the tax, from a terminal outside of Iowa for importation into Iowa, the tax liability is computed in the same manner as in paragraph “a” with the exception that no deduction is allowable for exports.

**68.5(2)** The fuel tax liability for a restrictive supplier is to be computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the preceding calendar month.

**68.5(3)** The fuel tax liability for an importer is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the applicable reporting period.

**68.5(4)** The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All entries on the return for determining the tax liability must be rounded to the nearest whole number.

This rule is intended to implement Iowa Code section 452A.3 as amended by 2001 Iowa Acts, House File 736, and sections 452A.5, 452A.8, and 452A.9.

**701—68.6(452A) Distribution allowance.** The tax computation for a supplier includes a distribution allowance of 1.6 percent of the motor fuel gallonage and 0.7 percent of the undyed special fuel gallonage removed from the terminal during the reporting period. The distributor purchasing the fuel from the supplier is entitled to 1.2 percent of the motor fuel distribution allowance. The distributor or dealer purchasing fuel from a supplier is entitled to 0.35 percent of the undyed special fuel distribution allowance. The distribution allowance does not apply to fuel exported.

This rule is intended to implement Iowa Code sections 452A.5 and 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.7(452A) Supplier credit—uncollectible account.** A licensed supplier who is unable to recover the tax from an eligible purchaser or end user is not liable for the tax and may credit the amount of unpaid tax against a later remittance of tax.

**68.7(1)** To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

Notification is to be sent to the Iowa Department of Revenue, Examination Section, Compliance Division, P. O. Box 10456, Des Moines, Iowa 50306-0456.

**68.7(2)** A supplier does not qualify for the credit if the purchaser did not elect to apply for the eligible purchaser or end user status or did not qualify to be an eligible purchaser. Likewise, the credit does not apply if the supplier sells additional fuel to a delinquent eligible purchaser or end user after notifying the department that the supplier has an uncollectible debt with an eligible purchaser.

**68.7(3)** Upon notification from the supplier that an eligible purchaser is in default of the tax payment, that person's eligible purchaser or end user status will be canceled by the department. The eligible purchaser or end user status will not be reinstated until such time as the purchaser posts securities to guarantee future tax payments as provided in 701—paragraph 67.21(1) "d."

**68.7(4)** Eligible purchaser. Any distributor of motor fuel or special fuel or end user of special fuel who requests authorization to make delayed payments of the motor vehicle fuel tax must first register with the department to obtain the eligible purchaser status.

The eligible purchaser must pay the tax to the supplier by electronic funds transfer one business day prior to the date the tax is to be paid by the supplier.

Once approved, the eligible purchaser status is valid until voluntarily canceled by the eligible purchaser or canceled by the department of revenue. See 701—subrule 67.23(4).

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.8(452A) Refunds.** Refunds are allowable for the tax paid on motor fuel and undyed special fuel in the following situations:

**68.8(1)** Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is "primarily" engaged in the performance of some "essential" government function, and (e) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed. *Unemployment Compensation Commission v. Wachovia Bank & Trust Company*, 215 N.C. 491, 2 S.E.2d 592 (1939); 1976 O.A.G. 823, 827. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax. *Wood Brothers Construction Co. v. Bagley*, 232 Iowa 902, 6 N.W.2d 397 (1942).

The refund is not available to employees of the federal government who purchase fuel individually and are later reimbursed by the federal government. The name of the federal agency must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

**68.8(2)** Transit systems. Fuel sold to an Iowa urban transit system as defined in 701—67.1(452A) or a company operating a taxicab service under contract with an Iowa urban transit system which is used for a purpose specified in Iowa Code section 452A.57(6) and fuel sold to a regional transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(11).

**68.8(3)** The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

The refund is not available to agencies or instrumentalities of a political subdivision, but rather only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823)

The refund is also not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on

the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

**68.8(4)** Contract carriers. Motor fuel and undyed special fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

**68.8(5)** Fuel used in unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and fuel used for home heating.

**68.8(6)** Fuel used for producing denatured alcohol.

**68.8(7)** Fuel used in the watercraft of a commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to Iowa Code section 482.4.

**68.8(8)** Fuel placed in motor vehicles, whether registered or not registered, not operated on public highways, and used in the extraction and processing of natural deposits.

**68.8(9)** Idle time. Persons who wish to claim a refund for idle time (the engine is running but not propelling the vehicle) must first apply to the department and provide statistical information on how the refund amount will be calculated. Normally, to qualify for a refund the vehicle must be equipped with an on-board monitoring device which will record the actual time the engine is idling and the amount of fuel consumed while idling. If the device only records the idle time and not fuel used, the refund amount will be calculated at one-half gallon of fuel consumed per one hour of idle time. The computation must also consider the miles driven in Iowa versus total miles driven. The department will require a review of interstate carrier reports before approval of the computation method.

**68.8(10)** Power takeoff. Persons operating vehicles which have auxiliary equipment that is powered by the power takeoff may apply for a refund for that portion of the fuel used for powering the auxiliary equipment.

The person requesting the refund must furnish the department with statistical information on how the exempt percentage is established. The percentage can be established by using the following noninclusive methods.

- Determine the actual fuel usage by the hour while the auxiliary equipment is in use compared to total hours the engine is running.
- Establish total miles per gallon for the vehicle when auxiliary equipment is not in use compared to miles per gallon while the equipment is in use.
- Other computation methods to be reviewed by the department prior to approval.

It has been predetermined that tax on fuel used in the mixing of cement into concrete, the off-loading of the concrete, and the loading and off-loading of solid waste will be refunded on the basis of 30 percent of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from tax-paid bulk storage tanks or sales tickets where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be granted where it can be substantiated through the use of separate meters which operate to measure the fuel when the vehicle is stationary or the use of separate tanks which fuel the vehicle only when the vehicle is stationary that the actual nonhighway fuel usage exceeds 30 percent.

**68.8(11)** Refrigeration units (reefers). Tax paid on motor fuel and undyed special fuel is subject to refund. The person must maintain records of fuel purchases to substantiate the tax-paid purchases. Invoices must meet the criteria set forth in rule 701—67.12(452A). In addition, the invoices must separately state fuel purchased and placed in the reefer unit. Liquefied petroleum gas may be purchased tax-free for use in reefer units. See rule 701—69.10(452A).

**68.8(12)** Pumping credits. A refund will be allowed for taxes paid on fuel once that fuel has been placed in the fuel supply tank of a motor vehicle when the motor of that vehicle is used as a power

source for off-loading procedures. Meter readings from the pump used in the off-loading procedure or the invoice, manifest or bill of lading number covering the product off-loaded must be retained. The claims for refund, unless a different amount can be proven, will be (a) one-half gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using motor fuel or special fuel (diesel) to power the motor and (b) one gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using special fuel (L.P.G.) to power the motor.

**68.8(13)** Transport diversions. When a transport load of motor fuel or undyed special fuel is sold tax-paid with a destination in this state and later diverted to a destination outside the state, the person who actually paid the Iowa tax is entitled to a refund. To secure a refund, the person must file a completed claim form provided by the department with supporting documentation including a copy of the bill of lading, invoices or document showing where and to whom the fuel was delivered, a copy of the reporting form and evidence of payment to the state where the fuel was actually delivered.

**68.8(14)** Casualty loss. In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, earthquake, terrorist attack, or other casualty, the taxpayer must inform the department in writing of such loss within 10 days of the loss; and the notification must contain the amount of gallon-age lost or destroyed which must be in excess of 100 gallons. An application for refund must be submitted to the department within 60 days of the notification and contain a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction and the number of gallons. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss. No refund is allowable for fuel lost through evaporation, theft, normal leakage, or unknown causes. Leakage resulting from a major accident or catastrophe is subject to refund.

**68.8(15)** Exports by eligible purchasers (distributors). Distributors who have purchased tax-paid motor fuel or undyed special fuel and sell the fuel to consumers outside the state may apply for a refund of the Iowa tax paid. The distributor must retain records as provided in rule 701—67.3(452A) to support the request for refund.

**68.8(16)** Blending errors for special fuel. Dyed special fuel commingled with undyed special fuel and motor fuel commingled with special fuel. If dyed special fuel is inadvertently mixed with tax-paid undyed special fuel to the extent that the undyed fuel must have additional dye added to meet federal dyeing requirements to qualify as exempt dyed fuel, the tax is refundable on the undyed special fuel. The refund request must contain the number of gallons of undyed fuel lost through the mixing error and documentation as to how the gallonage was determined. If motor fuel is blended in error with dyed special fuel to produce a commingled product that must be destroyed or refined for subsequent use, the tax-paid fuel is subject to refund. The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

**68.8(17)** Watercraft. Special fuel used in watercraft. This subrule is retroactive to July 1, 1996.

**68.8(18)** Refund of tax—Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. However, Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 452A. The fuel must be purchased by the Indian seller with the tax included in the purchase price, unless the seller's status as a particular licensee authorizes the seller to purchase fuel tax-free. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or the tribe of which the Indian purchaser is a member filing a claim for refund of the tax paid by the tribe on fuel sold to the Indian purchaser.

**68.8(19)** Racing fuel.

**68.8(20)** Benefited fire districts if the fuel is used for public purposes.

This rule is intended to implement Iowa Code section 452A.17 as amended by 2005 Iowa Acts, House File 216, and Iowa Code section 452A.71.

**701—68.9(452A) Claim for refund—payment of claim.** In order to receive a refund, the claimant must hold a refund permit.

**68.9(1)** Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and alcohol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

**68.9(2)** Refunds are made and the amount of the refund is paid to the person who actually paid the tax with the following exception: Persons requesting a refund for idle time, power takeoff, reefer units, pumping credits, or transport diversions may designate another person as an agent to file the claim and receive the refund. The person acting as an agent for others must provide the department with the following information including, but not limited to, the name, address, and federal identification number or social security number of the person on whose behalf they are requesting the refund. Once a person is designated as an agent, this designation remains in force until the department is notified in writing the agency agreement no longer exists. A governmental agency may designate another governmental agency as an agent for filing and receiving any tax refund authorized in Iowa Code section 452A.17.

**68.9(3)** Deposit of refund. If the person so designates on the application, the department will direct deposit the refund in the person's designated bank account. If this option is selected on the application, additional forms will be provided to secure the needed information for direct deposit. In lieu of direct deposit, the permit holder will receive a state warrant.

**68.9(4)** A claim for refund will not be allowed unless the claimant has accumulated \$60 in credits for one calendar year. A claim for refund may be filed anytime the \$60 minimum has been met within the calendar year. If the \$60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the \$60 minimum has been met, the claim for refund must be filed within one year if met prior to July 1, 2002, and within three years if met on or after July 1, 2002.

EXAMPLE: A claim for refund in the amount of \$200 is filed in March of 1996. During the remainder of 1996 an additional \$50 in credits is accumulated. The claimant cannot claim this \$50 credit on the claimant's 1996 income tax return because an income tax credit cannot be filed for any year in which a claim for refund was filed. The claimant must file a claim for refund of the \$50 even though it is below the \$60 minimum.

EXAMPLE: The claimant does not have a refund permit. The claimant accumulates \$40 in credits during January of 2002 and \$50 in credits during June of 2002. The claimant may claim a \$90 credit on the claimant's 2002 income tax return or apply for a refund permit and claim a refund within one year of June 2002 which is the date the \$60 minimum was met. If the \$60 minimum is met on or after July 1, 2002, the claim for refund must be filed within three years of the date the \$60 minimum was met.

**68.9(5)** A refund will not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or any undyed special fuel taken out of this state in aircraft or motor vehicles.

**68.9(6)** Rescinded IAB 11/3/99, effective 12/8/99.

This rule is intended to implement Iowa Code sections 452A.17, 452A.19, 452A.21, and 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

**701—68.10(452A) Refund permit.** To obtain the refund provided for in Iowa Code chapter 452A and rule 68.8(452A), the claimant must have an uncanceled refund permit. The application for a refund permit is provided by the department and will contain, but not be limited to, the following information: (1) the name and location of the business and the mailing address if different, (2) the type of ownership,

(3) the social security number or federal identification number of the applicant, and (4) the type of refund requested. The refund permit is issued without cost and remains in effect until revoked, canceled or until the permit becomes invalid. All refund permit holders are required to keep invoices and copies of returns if filed, supporting schedules and studies for documentation to support the refund.

This rule is intended to implement Iowa Code section 452A.18 as amended by 1995 Iowa Acts, chapter 155.

**701—68.11(452A) Revocation of refund permit.** The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant's books and records for examination by the department, and (4) nonuse for a period of three years. If the permit is revoked for reason (1), (2), or (3) above, the permit will not be reissued for a period of at least one year. If the permit is revoked for reason (4) above, the permit will be reissued upon proper application. (See rule 701—7.23(17A) for revocation procedure.)

This rule is intended to implement Iowa Code section 452A.19.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—68.12(452A) Income tax credit in lieu of refund.** In lieu of applying for a refund permit, a person or corporation may claim the refund allowable under Iowa Code section 452A.17 as an income tax credit. If a person or corporation holds a refund permit and elects to receive an income tax credit, the person or corporation must cancel the refund permit within 30 days after the first day of its year or the permit becomes invalid and application must be made for a new permit. Once the election to receive an income tax credit has been made, it remains in effect until the election is changed. The income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, exports by distributors, and excess tax paid on ethanol blended gasoline.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(2), and 452A.21 as amended by 1999 Iowa Acts, Senate File 136.

**701—68.13(452A) Reduction of refund—sales and use tax.** Under Iowa Code section 423.3(56), the sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 423.3 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The sales price upon which the sales and use tax will be applied shall include all federal excise taxes, but will not include the Iowa fuel tax. *Gurley v. Rhoden*, 421 U.S. 200 (1975).

This rule is intended to implement Iowa Code section 452A.17.  
[ARC 2247C, IAB 11/25/15, effective 12/30/15]

**701—68.14(452A) Terminal withdrawals—meters.** Any refinery or terminal within this state must be fixed with meters which totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), and 452A.59 as amended by 1995 Iowa Acts, chapter 155.

**701—68.15(452A) Terminal and nonterminal storage facility reports and records.** Each terminal and nonterminal storage facility operating in Iowa must file a monthly inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name and license number of the company that owns and operates the terminal or nonterminal storage facility.
2. The location of the terminal or nonterminal storage facility.
3. The month and year covered by the report.
4. The terminal code assigned by the Internal Revenue Service or the storage facility license number assigned by the department.
5. The beginning inventory.
6. The total receipts for the month including for each receipt: (a) the gross gallons received by schedule code, by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of receipt, (d) the seller, (e) the carrier, (f) the mode of transportation, and (g) the destination state.
7. The total withdrawals for the month, including for each withdrawal: (a) the gross gallons withdrawn by schedule code and by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, (f) the mode of transportation, (g) the destination state, (h) the origin state, and (i) the carrier.
8. The actual ending inventory and any gains or losses.
9. The signature or electronic signature of the person responsible for preparing the report.
10. Such additional information as the department may require.

For periods beginning on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission. All licensees must file reports by electronic transmission beginning September 1, 2006.

This rule is intended to implement Iowa Code section 452A.15(2).

**701—68.16(452A) Method of reporting taxable gallonage.** The exclusive method of determining gallonage of any purchase or sale of motor fuel or special fuel and distillate fuel is to be on gross-volume basis. A temperature-adjusted or other method cannot be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refineries.

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.17(452A) Transportation reports.** The reports required under Iowa Code section 452A.15(1) are to be filed by railroad carriers, common carriers, contract carriers, distributors transporting fuel for others, and anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state. The report must include all fuel which was imported into Iowa and unloaded at other than terminal storage, all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and all fuel withdrawn from Iowa terminal storage and exported from Iowa. These reports must be filed monthly and show as to each delivery:

1. The name, address, and federal identification number or social security number of the person to whom actually delivered.
2. The name, address, and federal identification number or social security number of the originally named consignee, if delivered to anyone other than the originally named consignee.
3. The point of origin, the point of delivery, and the date of delivery.
4. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.
5. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.
6. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.
7. The manner, if delivered by other means, in which the delivery is made.

8. Such additional information relative to shipments of motor fuel or special fuel as the department may require.

For periods on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission.

This rule is intended to implement Iowa Code section 452A.15 as amended by 2002 Iowa Acts, House File 2622 and Senate File 2305.

**701—68.18(452A) Bill of lading or manifest requirements.** Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal, ethanol plant, biodiesel plant or point of origin.
2. Contain the date of withdrawal or import.
3. Contain the name of the shipper-supplier-consignor.
4. Contain the name of the purchaser-consignee.
5. Contain the place of actual destination.
6. Contain the name of the transporter.
7. Contain the gross gallons by fuel type.
8. Contain the designation for ethanol blended gasoline or biodiesel blended fuel as provided in Iowa Code section 214A.2.
9. Contain a statement designating whether diesel fuel is dyed or undyed.
10. Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76. [ARC 8225B, IAB 10/7/09, effective 11/11/09]

**701—68.19(452A) Right of distributors and dealers to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel using a biofuel.**

**68.19(1)** A dealer or distributor may blend a conventional blendstock for oxygenate blending, gasoline, or diesel fuel using the appropriate biofuel, or sell unblended or blended gasoline or diesel fuel on any premises in this state. This subrule does not apply to the extent that the use of the premises is restricted by federal, state, or local law.

**68.19(2)** A refiner, supplier, terminal operator, or terminal owner who in the ordinary course of business sells or transports a conventional blendstock for oxygenate blending, gasoline unblended or blended with a biofuel, or diesel fuel unblended or blended with a biofuel shall not refuse to sell or transport to a distributor or dealer any conventional blendstock for oxygenate blending, unblended gasoline, or unblended diesel fuel that is at the terminal, based on the distributor's or dealer's intent to use the conventional blendstock for oxygenate blending, or blend the gasoline or diesel fuel with a biofuel.

**68.19(3)** This rule shall not be construed to do any of the following:

- a. Prohibit a distributor or dealer from purchasing, selling or transporting a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.
- b. Affect the blender's license requirements under Iowa Code section 452A.6.
- c. Prohibit a dealer or distributor from leaving a terminal with a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.
- d. Require a nonrefiner biofuel manufacturer to offer or sell a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

**68.19(4)** A refiner, supplier, terminal operator, or terminal owner who violates this rule is subject to a civil penalty of not more than \$10,000 per violation. Each day that a violation continues is deemed a separate offense. For more information on enforcement of this penalty, see 701—subrule 10.71(8).

This rule is intended to implement Iowa Code section 452A.6A.

[ARC 1442C, IAB 4/30/14, effective 6/4/14]

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CHAPTER 78  
REPLACEMENT TAX AND STATEWIDE PROPERTY  
TAX ON RATE-REGULATED WATER UTILITIES

REPLACEMENT TAX

**701—78.1(437B) Who must file return.** Beginning with property tax years and replacement tax years beginning on or after January 1, 2013, each taxpayer, as defined in Iowa Code section 437B.2, shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437B.4(1) “a” and “b” and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.2(437B) Time and place for filing return.** The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is \$300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after the due date for filing. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Property Tax Division, Hoover State Office Building, Des Moines, Iowa 50319. [ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.3(437B) Form for filing.** Returns must be made by taxpayers on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for proper forms to the department in ample time to have the taxpayers’ returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer’s return so as to fully and clearly set forth the data required. All information shall be supplied and each direction complied with in the same manner as if the forms were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making the replacement tax return.

Returns received which are not completed, but merely state “see schedule attached,” “no tax due,” or some other conclusionary statement are not considered to be properly filed returns and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return’s being filed after the due date.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.4(437B) Payment of tax.** Payment of tax shall not accompany the filing of the replacement tax return with the director. Payment of tax shall not be made to the director or the state of Iowa. Payment of the proper amount of tax due shall be made to the appropriate county treasurer upon notification by the county treasurer to the taxpayer of the taxpayer’s replacement tax obligation.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.5(437B) Statute of limitations.**

**78.5(1)** The director has three years after a return is filed to determine the tax due if the return is found to be incorrect and to give notice to the taxpayer of the determination. This three-year statute of limitations does not apply in the instances specified in subrule 78.5(2).

**78.5(2)** If a taxpayer files a false or fraudulent return with the intent to evade any tax, the correct amount of tax due may be determined by the director at any time after the return has been filed.

**78.5(3)** If a taxpayer fails to file a return, the three-year statute of limitations does not begin until the return is filed with the director.

**78.5(4)** Waiver of statute of limitations. The department and the taxpayer may extend the three-year period of limitations provided in subrule 78.5(1) above by signing a waiver agreement form provided by the department. The agreement shall designate the period of extension and the tax year for which the extension applies. The agreement shall provide that the taxpayer may file a claim for refund of replacement tax at any time prior to the expiration of the agreement.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.6(437B) Billings.****78.6(1) Notice of adjustments.**

*a. Authorization to send notice of adjustments.* An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that items subject to tax may not have been listed or included as taxable, in whole or in part, or that no return was filed when one was due is authorized to notify the taxpayer of this discovery by ordinary mail. This notice is not an assessment. It informs the taxpayer what amount would be due if the information discovered is correct. A copy of such notice shall also be sent to the appropriate county treasurer.

*b. Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should file a timely claim for refund. However, payment will not be required until an assessment has been made, although interest will continue to accrue if timely payment is not made. If no payment has been made, the taxpayer may discuss with the agent, auditor, clerk, or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. The taxpayer may also ask for a conference with the Department of Revenue, Property Tax Division, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the taxpayer's position may be required.

*c. Power of agent, auditor, or employee to compromise tax claim.* No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk, or employee who notified the taxpayer of the discrepancy is limited to the determination of the correct amount of tax.

**78.6(2) Notice of assessment.** If, after following the procedure outlined in paragraph 78.6(1) "b," no agreement is reached and the taxpayer does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A), or if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437B.10(1) "b" for filing such claims.

**78.6(3) Supplemental assessments and refund adjustments.** The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

#### **701—78.7(437B) Refunds.**

**78.7(1)** A claim for refund of replacement tax may be made on a form obtainable from the department. All claims for refund should be filed with the director and not with the county treasurer. In the case of a refund claim filed by an agent or representative of the taxpayer, a power of attorney must accompany the claim. All claims for refund must be in writing.

**78.7(2)** A taxpayer shall not offset a refund or overpayment of tax for one tax year as a prior payment of tax of a subsequent tax year on the tax return of a subsequent year unless the provisions of Iowa Code section 437B.4(5) are applicable.

**78.7(3)** Refunds—statute of limitations. The statute of limitations with respect to which refunds or credits may be claimed are:

*a.* The later of three years after the due date of the tax payment upon which the refund or credit is claimed or one year after which such payment was actually made.

*b.* Ninety days after the due date of the tax payment upon which refund or credit is claimed if the tax is alleged to be unconstitutional.

**78.7(4)** No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid to the appropriate county treasurer under written protest which specifies the particulars of the alleged unconstitutionality.

**78.7(5)** The taxpayer responsible for paying the tax, or the taxpayer's successors, are the only persons eligible to file claims for refund or credit of the tax with the director and are the only persons eligible to receive such refunds or credits.

**78.7(6)** The director will promptly notify the appropriate county treasurer of the acceptance or denial of any refund claim or credit. The county treasurer shall pay the refund claim or portion thereof accepted by the director.

**78.7(7)** A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule 701—7.8(17A).

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.8(437B) Abatement of tax.** The provisions of rule 701—7.31(421) are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the director, the appropriate county treasurer shall be notified. The director's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

#### **701—78.9(437B) Taxpayers required to keep records.**

**78.9(1)** Records required by taxpayers taxed under Iowa Code chapter 437B. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

*a.* Records associated with the total number of gallons of water carried through the taxpayer's distribution system during the tax year and during each of the immediately preceding five calendar years. For calendar years prior to tax year 2013, the total number of gallons of water carried through the taxpayer's distribution system is calculated as though Iowa Code chapter 437B was in effect for such calendar year.

*b.* Records associated with the total amount of nonrevenue water, as that term is defined in Iowa Code section 437B.2(9), carried through the taxpayer's distribution system during the tax year and during each of the immediately preceding five calendar years. For calendar years prior to tax year 2013, the total number of gallons of nonrevenue water carried through the taxpayer's distribution system is calculated as though Iowa Code chapter 437B was in effect for such calendar year.

*c.* Records associated with the total taxable gallons of water delivered by the taxpayer to consumers, as that term is defined in Iowa Code section 437B.2(2), within the service area during the tax year and during each of the immediately preceding five calendar years. For calendar years prior to tax year 2013, the total taxable gallons delivered by the taxpayer to consumers by the water utility is the difference between the gallons of water calculated in paragraphs 78.9(1) "a" and "b."

*d.* For tax years 2013, 2014, and 2015, records associated with property tax amounts due and payable as the result of assessment years 2010 and 2011.

*e.* Records associated with the taxpayer's calculation of the tentative replacement taxes due for the tax year and required to be shown on the tax return.

*f.* Records associated with increases or decreases in the tentative replacement tax required to be shown to be due where the replacement delivery tax rates are subject to recalculation under the provisions of Iowa Code section 437B.4(5).

*g.* All work papers associated with any of the records described in this subrule.

*h.* Records pertaining to any additions or deletions of property described as exempt from local property tax in Iowa Code section 437B.12.

*i.* Records associated with allocation of property described in paragraph 78.9(1) "h" above among local taxing districts.

**78.9(2)** The records required to be maintained by this rule shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the replacement taxes are reported or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.10(437B) Credentials.** Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.11(437B) Audit of records.** The director or the director's authorized representative shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a tax return filed or of information presented or for estimating the tax liability of a taxpayer. When a taxpayer fails or refuses to produce the records for examination upon request, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the director deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to the replacement tax.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.12(437B) Information confidential.** Iowa Code sections 437B.10(2) and 437B.10(3) apply generally to the director, deputies, auditors, and present or former officers and employees of the department. Disclosure of the gallons of water delivered by a taxpayer taxed under Iowa Code chapter 437B in a service area disclosed on a tax return, return information, or investigative or audit information is prohibited. Other persons having acquired this confidential information will be bound by the same

rules of secrecy under these Iowa Code provisions as any member of the department and will be subject to the same penalties for violations as provided by law.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

#### STATEWIDE PROPERTY TAX

**701—78.13(437B) Who must file return.** Each taxpayer shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code section 437B.17 and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity for which the taxpayer's property was subject to the statewide property tax during the tax year, the return must contain a statement to that effect.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.14(437B) Time and place for filing return.** The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Property Tax Division, Hoover State Office Building, Des Moines, Iowa 50319.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.15(437B) Form for filing.** Rule 701—78.3(437B) is incorporated herein by reference.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.16(437B) Payment of tax.** Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to Treasurer, State of Iowa. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.17(437B) Statute of limitations.** Rule 701—78.5(437B) is incorporated herein by reference.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.18(437B) Billings.**

**78.18(1) Notice of adjustments.** Subrule 78.6(1) is incorporated herein by reference.

**78.18(2) Notice of assessment.** If, after following the procedure outlined in paragraph 78.6(1) "b," no agreement is reached and the person does not pay the amount determined to be correct to the director, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A), or if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437B.10 and 437B.18 for filing such claims.

**78.18(3) Supplemental assessments.** Subrule 78.6(3) is incorporated herein by reference.  
[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.19(437B) Refunds.** Subrules 78.7(1) to 78.7(3), 78.7(5) and 78.7(7) are incorporated herein by reference.

No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid under written protest which specifies the particulars of the alleged unconstitutionality.  
[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.20(437B) Abatement of tax.** The provisions of rule 701—7.31(421) are applicable to the statewide property tax.  
[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.21(437B) Taxpayers required to keep records.**

**78.21(1) Records required.** The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

- a. Records associated with the assessed value and base year assessed value of property subject to the statewide property tax.
- b. Records associated with the computation of the statewide property tax required to be shown due on the tax return.
- c. Records associated with the book value of the local amount of any major addition by the local taxing district.
- d. Records associated with the book value of the statewide amount of any major addition.
- e. Records associated with the transfer or disposal of all operating property, as that term is defined in Iowa Code section 437B.2(10), in the preceding calendar year, by local taxing district.
- f. Records associated with the book value of all other taxpayer property subject to the statewide property tax.
- g. Records associated with the book value of any major addition, by situs, eligible for the urban revitalization exemption provided for in Iowa Code chapter 404.
- h. All work papers associated with any of the records described in this rule.
- i. Records associated with allocation of property subject to statewide property tax among local taxing districts.

**78.21(2)** The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the statewide property tax is reported or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.22(437B) Credentials.** Rule 701—78.10(437B) is incorporated herein by reference.  
[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

**701—78.23(437B) Audit of records.** Rule 701—78.11(437B) is incorporated herein by reference.  
[ARC 0965C, IAB 8/21/13, effective 8/2/13; ARC 1105C, IAB 10/16/13, effective 11/20/13; ARC 2696C, IAB 8/31/16, effective 10/5/16]

These rules are intended to implement Iowa Code chapter 437B.

[Filed Emergency ARC 0965C, IAB 8/21/13, effective 8/2/13]

[Filed ARC 1105C (Notice ARC 0966C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]

[Filed ARC 2696C (Notice ARC 2574C, IAB 6/8/16), IAB 8/31/16, effective 10/5/16]

TITLE XI  
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAXCHAPTER 86  
INHERITANCE TAX

[Prior to 12/17/86, Revenue Department[730]]

**701—86.1(450) Administration.****86.1(1) Definitions.** The following definitions cover Chapter 86.

“*Administrator*” means the administrator of the compliance division of the department of revenue.

“*Child*” means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

“*Compliance division*” is the administrative unit of the department created by the director to administer the inheritance and fiduciary income tax laws of the state.

“*Department*” means the department of revenue.

“*Devise*,” when used as a verb, means to dispose of property, both real and personal, by a will.

“*Director*” means the director of revenue.

“*Estate*” means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of “gross estate” and “net estate” under this chapter, see those terms as referenced in this subrule.

“*Executor*” means any person appointed by the court to administer the estate of a testate decedent.

“*Fiduciary*” includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent’s probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

“*Gross estate*” as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and within three years of death, transfers to take effect in possession or enjoyment at death, trust property, “pay on death” accounts, annuities, and certain retirement plans, are not part of the decedent’s probate estate, but are includable in the decedent’s gross estate for inheritance tax purposes. *In re Louden’s Estate*, 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres’ Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy’s Estate*, 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann’s Estate*, 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven’s Estate*, 236 N.W.2d 366 (Iowa 1975); *In re English’s Estate*, 206 N.W.2d 305 (Iowa 1973).

Effective for estates of a decedent dying on or after July 1, 2003, property and any interest in or income from any of the estates and property, which pass from the decedent owner in any manner, are subject to tax if the passing interest is in one of the following: (1) real estate and tangible personal property located in Iowa regardless of whether the decedent was a resident of Iowa at death; and (2) intangible personal property owned by a decedent domiciled in Iowa.

“*Gross share*” means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

“*Heir*” includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

“*Internal Revenue Code*” means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(5) and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

“*Intestate estate*” means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

“*Issue*,” for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

“*Net estate*” means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

“*Net share*” means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe*, 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme*, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

“*Personal representative*” shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

“*Probate*” means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

“*Responsible party*” is the person liable for the payment of tax under this chapter. See 701—86.2(450).

“*Simultaneous deaths*” occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

“*Stepchild*” means the child of a person who was married to the decedent at the time of the decedent’s death, or the child of a person to whom the decedent was married, which person died during the marriage of the decedent.

“*Surviving spouse*” means the legally recognized surviving wife or husband of the decedent.

“*Tax*” means the inheritance tax imposed by Iowa Code chapter 450.

“*Taxpayer*” means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

“*Trustee*” means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

“*Trusts*” means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

“*Unknown heirs*” means heirs to an estate in which the identities of the heirs or the place of residency of the heirs cannot be ascertained with reasonable certainty.

“*Will*” includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

**86.1(2) *Delegation of authority.*** The director delegates to the administrator, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and any other employees or representatives of the department.

**86.1(3) *Information deemed confidential.*** Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

**86.1(4) *Information not confidential.*** Copies of wills, the filing of an inheritance tax lien, release of a real estate lien, probate inventories, trust instruments, deeds and other documents which have been filed for public record are not deemed confidential by the department.

**86.1(5) *Forms.*** The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed or approved by the director—see 701—8.3(17A).

**86.1(6) *Safe deposit boxes and joint accounts.*** Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. Additionally, effective July 1, 2005, there is no longer a requirement that all persons, banks, credit unions, and savings and loan associations notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

This rule is intended to implement Iowa Code chapter 22 and Iowa Code sections 450.1 and 450.2 as amended by 2003 Iowa Acts, chapter 95, sections 1 and 2, and sections 421.2, 450.67, 450.68, 450.94, 450.97 and 450B.7.

[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 1545C, IAB 7/23/14, effective 8/27/14]

## **701—86.2(450) Inheritance tax returns and payment of tax.**

**86.2(1) *Filing of an inheritance tax return.*** Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:

*a. Mandatory filing.* The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

Effective July 1, 2001, an estate is required to file an Iowa inheritance tax return if the entire estate of the decedent exceeds the sum of \$25,000 after deducting the liabilities of the estate.

*b. Who must file.* If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

*c. Who is not required to file a return for estates of decedents dying on or after July 1, 2004.*

(1) Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if at least one of the following situations is applicable:

1. All estate assets are held solely in joint tenancy with right of survivorship between husband and wife alone; or

2. All estate assets are held solely in joint tenancy with right of survivorship, and not as tenants in common, solely between the decedent and individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on the individuals' relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 86.2(1) "c"(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

3. All assets are passing by beneficiary designation pursuant to a trust and are intended to pass the decedent's property at death or through a nonprobate transfer solely to individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on their relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 86.2(1) "c"(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

4. All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth below in subparagraph 86.2(1) "c"(2); or

5. For estates of decedents dying on or after July 1, 2007, if the total aggregate value of all the tangible personal property in the estate is \$5,000 or less and in-kind distributions are made. Any in-kind distribution of personal property is exempt from inheritance tax when the total aggregate value of the tangible personal property in the estate is \$5,000 or less. If the total aggregate amount of tangible personal property is greater than \$5,000, then the exemption for in-kind distributions of tangible personal property does not apply. See Iowa Code section 450.4(7); see also Iowa Code section 633.276 for a description of tangible personal property that qualifies.

EXAMPLE 1: The total aggregate value of the tangible personal property in the estate is \$3,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is not subject to inheritance tax.

EXAMPLE 2: The total aggregate value of the tangible personal property in the estate is \$15,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is subject to inheritance tax because the total aggregate value of tangible personal property is greater than \$5,000.

(2) Individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax. "Lineal descendants" includes descendants by adoption.

*d. General rules.* An Iowa inheritance tax return must be filed if estate assets pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

(1) If an inheritance tax return is not required because the estate meets the criteria in paragraph 86.2(1) "c," the final report (beginning with Iowa Code section 633.469) need not contain an inheritance tax receipt (clearance) issued by the department, but must properly certify that one of the criteria set forth in paragraph 86.2(1) "c" has been met as set forth in Iowa Code section 450.58(2).

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. A copy of this affidavit must be retained by the beneficiary that holds the real estate.

(3) If a return is filed with the department and the return is not required to be filed, the department will retain the return as required by statutes governing retention of returns. However, the department will not process the filed return if the statute does not require that the return be filed. The department will not issue a clearance in an estate in which a return is not required to be filed.

**86.2(2) Form and content—inheritance tax return.**

*a. Estates of decedents dying prior to July 1, 1983.* Rescinded IAB 10/13/93, effective 11/17/93.

*b. Estates of decedents dying on or after July 1, 1983.* For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return shall be filed. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of \$25,000 (\$10,000 for estates of decedents dying before July 1, 2001) is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

*c. Special rule when the surviving spouse succeeds to property in the estate.* Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) If all of the property includable in the gross estate for inheritance tax purposes is held in joint tenancy with right of survivorship by husband and wife alone, an inheritance tax return is not required to be filed and a certificate from the department stating no inheritance tax is due is not required to release the inheritance tax lien under Iowa Code section 450.7(2).

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

*d. Estates of decedents dying on or after July 1, 1999.*

(1) In addition to the special rule for surviving spouses set forth in paragraph 86.2(2) "c," effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and any person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. For property of the estate passing by means other than by joint tenancy with right of survivorship or any property passing by

joint tenancy with right of survivorship when the title to the property is held by persons other than those persons declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9. "Lineal descendants" includes descendants by adoption.

(2) The exemption granted to stepchildren and their lineal descendants is limited to the stepchildren of the decedent and the lineal descendants of the stepchildren of the decedent exclusively. The exemption is not extended to include any lineal ascendants of the step relationship, such as stepparent or stepgrandparent, nor does it include step relations of the decedent's lineal ascendants or descendants, such as the stepchildren of the decedent's children. For a definition of "stepchild" for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

(3) The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. For estates of decedents dying before July 1, 2001, a net estate that is less than \$10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than \$25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over \$25,000:

SCHEDULE B			
Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.			
If the share is:			
Not over \$12,500, the tax is 5% of the share.			
If over	But not over	Tax is	Of excess over
\$ 12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000
100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000
SCHEDULE C			
Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, child's stepchild, and all other individual persons. There is no exemption.			
If the share is:			
Not over \$50,000, tax is 10% of the share.			
If over	But not over	Tax is	Of excess over
\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000

100,000	and up	11,000 + 15%	100,000
<b>SCHEDULE D</b>			
A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:			
Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) or 2055:			
15% of the amount.			
<b>SCHEDULE E</b>			
Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state:			
10% of the amount.			
<b>SCHEDULE F</b>			
An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:			
5% of the amount.			
<b>SCHEDULE G</b>			
A charitable, religious, educational, or veterans organization as defined in IRC Section 170(c) or 2055.			
All other shares to income tax exempt organizations that are not defined in IRC Section 170(c) must provide their IRS letter of determination. Organizations may also be required to provide evidence that the bequest has restricted the funds to a conforming activity.			
Public libraries, public art galleries, hospitals, humane societies, municipal corporations, bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed \$500.			
Entirely exempt: No tax.			

**86.2(3) *Liability for the tax.*** The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable.

*Eddy v. Short*, 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923).

**86.2(4) Supplemental return—deferred interest.** When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation. At the top of the front page of the return, the word “SUPPLEMENTAL” shall be printed.

**86.2(5) Amended return.** If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word “AMENDED” shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 86.9(450), and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).

**86.2(6) Due date for filing—return on present property interests.** Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

*a.* On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997 (May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997 (August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997 (November 30 is a Sunday)
March 1997	December 31, 1997
April 1997	February 2, 1998 (January 31 is a Saturday and February 1 is a Sunday)
May 1997	March 2, 1998 (February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

*b.* Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

**86.2(7) Election to file—before termination of prior estate.** The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

*a. On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981).* Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

*b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate.* Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard*, 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp*, Clay County District Court, Probate No. 7251 (1980).

**86.2(8) Mandatory due date—return on a future property interest.**

*a. For estates of decedents dying prior to July 1, 1984.* Rescinded IAB 10/13/93, effective 11/17/93.

*b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981.* Unless the tax due on a future property interest has been paid under the provisions of subrule 86.2(7), paragraphs "a" and "b," the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

**86.2(9) Extension of time—return and payment.** For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

**86.2(10) Discount.** There is no discount allowed for early payment of the tax due.

**86.2(11) Penalties.** See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

**86.2(12) Interest on tax due.** All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the inheritance tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

This rule is intended to implement Iowa Code sections 421.14, 450.4, 450.5, 450.6, 450.9, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94 and 2004 Iowa Acts, chapter 1073, and 2005 Iowa Acts, chapter 14.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 2633C, IAB 7/20/16, effective 8/24/16]

### **701—86.3(450) Audits, assessments and refunds.**

**86.3(1) Audits.** Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds,

appraisals, and such other information as may reasonably be necessary to establish the correct tax due. See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review*, 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

**86.3(2) Assessments for additional tax.** The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

**86.3(3) Refunds.** If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

**86.3(4) Supplemental assessments and refund adjustments.** The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

**86.3(5) Assessments—period of limitations.** Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

*a.* Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding

day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

b. The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906).

**86.3(6) Period of limitations—federal audits.**

a. *Statute of limitations and federal audits in general.* In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5) “a” and “b,” shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, and the department receives such a notification, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, federal gift, and federal generation skipping transfer taxes (for deaths occurring after December 31, 2004) have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris*, 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

b. *Statute of limitations regarding federal audits involving real estate.*

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment begins on the date the taxpayer performs two affirmative acts: (a) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, federal gift, and federal generation skipping transfer taxes (for deaths occurring after December 31, 2004) have been concluded and (b) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

*c. Effect of additional time periods.* The additional six-month audit period set forth in “a” and “b” under this subrule does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)“b” for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax laws that incorporate Internal Revenue Code provisions. See Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25, 422.30, 450.37, 450.53, 450.65, 450.71, and 450.94.

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1545C, IAB 7/23/14, effective 8/27/14]

**701—86.4(450) Appeals.** A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department’s determination. For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department’s rules of practice and procedure before the department of revenue and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

**701—86.5(450) Gross estate.**

**86.5(1) Iowa real and tangible personal property.**

*a.* Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common.

*b.* Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman’s Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *In re English’s Estate*, 206 N.W.2d 305 (Iowa 1973); and *Lincoln’s Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

*c.* A nonresident decedent’s interest in a corporation, limited liability company, or partnership that owns real or tangible personal property with an Iowa situs that is titled in the name of that business entity is not subject to inheritance tax. An interest in a business entity is intangible personal property which follows the residence of the decedent for the purposes of inheritance tax.

d. Tangible personal property as defined in Iowa Code section 633.276 with an Iowa situs which is distributed in kind from the estate is not subject to inheritance tax if the aggregate value of all tangible personal property in the estate does not exceed \$5,000. See 86.2(1)“c”(1)“5.”

**86.5(2)** *Foreign real estate and tangible personal property.* Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent’s gross estate for tax purposes. *Frick v. Pennsylvania*, 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate*, 226 Iowa 1260, 286 N.W.2d 422 (1939).

**86.5(3)** *Intangible personal property—decedent domiciled in Iowa.* Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanless*, 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed 1339 (1939); *Lincoln’s Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

**86.5(4)** *Intangible personal property—decedent domiciled outside Iowa.* Rescinded IAB 10/30/13, effective 12/4/13.

**86.5(5)** *Classification of property.* The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman’s Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs*, 200 Iowa 672, 203 N.W. 28 (1925).

**86.5(6)** *Insurance—in general.* Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown*, 205 N.W.2d 925 (Iowa 1973).

a. *Insurance proceeds subject to tax.* The proceeds of insurance on the decedent’s life owned by the decedent and payable to the decedent’s estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977).

b. *Insurance proceeds not taxable.* Insurance on the decedent’s life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured’s personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown*, 205 N.W.2d 925 (Iowa 1973).

c. *Insurance proceeds includable—depending on circumstances.* Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent’s life and owned by the decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen*, Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent’s life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent’s interest. *In re Reed’s Estate*, 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

**86.5(7)** *Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.* A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor’s death, made in contemplation of death, is includable in the decedent’s gross estate. Any such transfer made within the three-year period prior to the grantor’s death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

*a. Factors to be considered include, but are not limited to:*

- (1) The age and health of the grantor at the time of the transfer,
- (2) Whether the grantor was motivated by living or death motives,
- (3) Whether or not the gift was a material part of the decedent's property,
- (4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

*b. Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:*

- (1) Made with the purpose of avoiding death taxes,
- (2) Made as a substitute for a testamentary disposition of the property,
- (3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,
- (4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

*c. Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:*

- (1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,
- (2) Made because of the financial need of the donee and in an amount that is appropriate to the need,
- (3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,
- (4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells*, 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate*, 219 Iowa 597, 258 N.W. 904 (1935).

*d. Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984.* All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 2012. The three-year period during which gifts may be subject to inheritance tax begins July 1, 2009. During the calendar year 2009, A made a cash gift to nephew B of \$14,000 on May 1, 2009, and a second gift to B of \$4,000 on August 1, 2009. In this example, none of the \$14,000 gift made on May 1, 2009, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the \$4,000 gift made on August 1, 2009, is includable for inheritance tax purposes because it is in excess of the calendar year 2009 federal gift tax exclusion of \$13,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual federal gift tax exclusion which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of \$2,000 per acre, or \$320,000. On August 1, 1994, A released the retained life estate without any consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen*, 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 701—86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, 2009, loaned brother B \$450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, 2011, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner*, 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9

percent for each year and no other gifts were made to B, A has made a gift to B of \$40,500 through August 2010 (one year after the note was executed) and an additional gift of \$40,500 through August 1, 2011, and two months' interest of \$6,750 from August 1, 2011, to the date of death on October 1, 2011. Therefore, in calendar year 2009 A has made a gift of 5/12 of \$40,500, or \$16,875. After deducting the annual calendar year exclusion of \$13,000, \$3,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year 2010, \$40,500, less the \$13,000 exclusion, or \$27,500, is subject to inheritance tax. For calendar year 2011 the loan was outstanding for nine months. Three-fourths of \$40,500, less \$13,000, or \$17,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, 2010, A sold a 160-acre Iowa farm to niece B for \$1,500 per acre, or \$240,000. On the date of sale, the fair market value of the farm was \$2,500 per acre, or \$400,000. A died on August 1, 2012. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth, and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 37 percent, not 40 percent, because the \$13,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, 2010, A sold a 160-acre Iowa farm to niece B for \$2,500 per acre, or \$400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are \$34,873.82 per year. A died on August 1, 2012. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of \$34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of \$34,873.82 for 20 years to reflect a 12 percent return on an investment is \$260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay \$260,488.05 for this 6 percent \$400,000 contract of sale.

Bona Fide Sale Percentage

Present value:  $\frac{260,488.05}{400,000.00} = 65\%$

Sale price: 400,000.00

This is the percentage of the sale price of \$400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of \$400,000 - \$260,488.05 or \$139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the \$13,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\$139,511.95 - \$13,000 = \frac{\$126,511.95}{400,000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the \$13,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale, not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

**86.5(8) Joint tenancy property—in general.** Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. Generally, the words and phrases “to A and B as joint tenants with full rights of survivorship and not as tenants in common” create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. “To A or B, payable to the order of self” creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. *In re Estate of Martin*, 261 Iowa 630, 155 N.W.2d 401 (1968); *Petersen v. Carstensen*, 249 N.W.2d 622 (Iowa 1977); *In re Estate of Loudon*, 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. *In re Estate of Horner*, 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words “as joint tenants” alone without the use of the phrase “with right of survivorship” may only create a tenancy in common. *Albright v. Winey*, 226 Iowa 222, 284 N.W. 86 (1939).

*a. Joint tenancy property—husband and wife alone.* Generally there are no shares in joint tenancy property because each joint tenant owns the whole property. As a result, joint tenancy property is not taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that separate money or property was used and contributed to a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. *Ida M. Jepsen v. Bair*, No. 85, State Board of Tax Review, June 18, 1975.

*b. Joint tenancy property—not held by husband and wife alone.* Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.

*c. Joint tenancy—convenience or constructive trust.* If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. *First National Bank v. Curran*, 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the

property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. *Petersen v. Carstensen*, 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

**86.5(9) *Transfers reserving a life income or interest.*** If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English*, 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate*, 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the annual gift exclusion.

**86.5(10) *Powers of appointment—in general.*** Iowa Code section 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

*a. General power of appointment.* Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. For example, a devise to A for life with "power to dispose of and pass clear title ... if A so elects," creates a life estate with a general power of appointment. *In re Estate of Cooksey*, 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, "Especially giving unto A the right to use and dispose of the same as A may see fit," creates a general power of appointment, *Volz v. Kaemmerle*, 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. *In re Estate of Harris*, 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. *In re Estate of Spencer*, 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

*b. Special power of appointment.* If there is a limitation on the donee's right to use the corpus only for care, maintenance and support, the power is special, not general. *Brown v. Brown*, 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A's interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. *Lourien v. Fitzgerald*, 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. *McCarthy v. McCarthy*, 178 N.W.2d 308 (Iowa 1970).

If the donee's power to appoint is limited to a class or group of persons, a special, not a general, power is created. *In re Estate of Spencer*, 232 N.W.2d 491, at 496 (Iowa 1975).

*c. Powers of appointment—taxation in donor's estate.* If the instrument in the donor's estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event the power is not exercised are treated in the donor's estate as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. *In re Estate of Higgins*, 194 Iowa 369 at 373, 189 N.W. 752 (1922); *Bussing v. Hough*, 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor's estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor's estate as if they had received the remainder interest in the property subject to the special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

*d. Powers of appointment in the estate of a donee dying on or after January 1, 1988.* Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee's death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 86.5(10) "a" and "b" for the distinction between a general and special power and subrule 86.5(11) for the rule governing QTIP elections.

For inheritance tax purposes, if there is an exercise or release of the general power within three years of the donee's death, the property subject to the exercise or release is includable in the donee's estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this rule when the nature of the disposition is such that if it were a transfer or disposition of the donee's property, the transfer would be subject to inheritance tax under Iowa Code section 450.3. The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. *In re Trust of Stork*, 233 Iowa 413, 421, 9 N.W.2d 273 (1943). For the purposes of section 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

**86.5(11) Qualified terminable interest property (QTIP).**

*a. In general.* Effective for estates of decedents dying on or after July 1, 1985, property passing from the decedent grantor-donor, which qualifies as qualified terminable interest property (QTIP) within the meaning of 26 U.S.C. Section 2056(b)(7)(B) is eligible to be treated for Iowa inheritance tax purposes, if an election is made, as passing in fee to the donee-grantee surviving spouse, in the estate of the grantor-donor decedent, subject to the provisions of law and this subrule. If the election is made, the qualified property, unless it is disposed of prior to death, shall be included in the gross estate of the

surviving spouse and treated as passing in fee to those succeeding to the remainder interest in the qualified property.

*b. Property transfers eligible.* Five factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years prior to the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a valid federal election must have been made on a required federal return with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years prior to the transferor's death; and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years prior to the transferor's death; and (5) Iowa must have constitutional nexus with the surviving spouse or QTIP property.

If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

**EXAMPLE 1.** Decedent A died testate, a resident of Iowa, July 2, 1995, leaving a surviving spouse, B, and two children, C and D. On February 1, 1992, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

**EXAMPLE 2.** On October 1, 1992, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the corpus was to be paid to A's children, C and D. A died July 2, 1995, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

*c. The qualified terminable interest election—in general.* The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be treated as a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code section 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes on a required federal return, or in case of a gift made within three years

of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, 1992, which was funded by \$200,000 in cash and a 160-acre Iowa farm worth \$200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, 1995, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the \$200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at \$200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

*d. The election—manner and form.* The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. The filing for the purpose of protective election is not allowed. Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

*e. Disposition of qualified property prior to death.* A disposition of all or part of the qualified property, which was the subject of the qualified terminable interest election, prior to the death of the surviving spouse, voids the election as to that portion of the property disposed of that is not retained by the surviving spouse. In this event, the portion of the qualified property not retained by the surviving spouse shall be taxed to those succeeding to the remainder interests in the disposed property as if the tax on the remainder interest had been deferred under Iowa Code sections 450.44 to 450.49. Except in the case of special use valuation property, the tax shall be based on the fair market value of the amount of the qualified property not retained by the surviving spouse at the time the property was disposed of. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950), see subrule 86.11(5) for taxation of remainder interests when the tax is deferred. The alternate valuation date cannot be used in computing the tax. See subrule 86.10(2). If QTIP property has been valued at its special use value under Iowa Code chapter 450B, and is disposed of prior to the death of the surviving spouse, the portion of the QTIP property not retained by the surviving spouse shall be valued for taxation as follows:

1. At its special use value at the time of its disposition, if the QTIP property remains in qualified use under 26 U.S.C. Section 2032A.
2. At its fair market value at the time of its disposition, if there is a cessation of the qualified use under 26 U.S.C. Section 2032A. In case there is a cessation of the qualified use, the recapture tax provisions of Iowa Code section 450B.3 shall not apply. The tax on the remainder interest is treated as a payment of tax deferred and subject to the rules on deferred tax and not a recapture, with interest, of the tax originally imposed in the decedent grantor-donor's estate.

*f. Inclusion in the estate of the surviving spouse.*

(1) Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

(2) Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 701—86.9(450), or at its special use value under Iowa Code chapter 450B and rule 701—86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1) "b" and rule 701—86.10(450), if the property is otherwise eligible.

(3) This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, 2017, survived by a spouse, B, aged 65, a child, C, and C's stepchildren, D and E. Under A's will, all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between D and E, who are the stepchildren of child C. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at \$250,000 and personal property valued at \$200,000.

Tax on the basis of all property passing in fee to B

<u>Share</u>	<u>Tax</u>
\$450,000	\$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to D and E.

<u>Share</u>	<u>Tax</u>
Spouse B: Life estate factor .42226 \$450,000 × .42226 = \$190,017	-0-
D's share ½ remainder factor .57774 \$450,000 × .57774 ÷ 2 = \$129,991.50	\$15,498.73
E's share—same as D's share <u>\$129,991.50</u>	<u>\$15,498.73</u>
Total \$450,000.00	\$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would cost D and E \$30,997.46 if the election had not been made.

EXAMPLE 3. G, the surviving spouse of F, died testate, a resident of Iowa, on October 15, 2017. Under the terms of G's will, G's grandchildren, H and I, inherit G's entire estate in equal shares. G's net estate consists of \$200,000 in personal property and a 160-acre Iowa farm with a value of \$250,000 both of which were the subject of a qualified terminable interest election in F's estate and in which H and I own the remainder interest. G's net estate also consisted of \$100,000 in intangible personal property that G owned in fee simple.

G's net estate for Iowa inheritance tax purposes consists of the following:

\$200,000, personal property from F's estate.

\$250,000, 160-acre farm from F's estate.

\$100,000, owned by G in fee simple.

\$550,000 Total

The shares of H and I and their tax owed in G's estate are computed as follows:

<u>Share</u>	<u>Tax</u>
Beneficiary H: ½ of the net estate, or \$275,000	\$0
Beneficiary I: (same as H) <u>\$275,000</u>	<u>\$0</u>
Totals \$550,000	\$0

g. *The QTIP tax credit and the credit for tax on prior transfers.* The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section 450.10(6) shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code section 450.10(6) are otherwise met.

**86.5(12) Annuities.** Annuities in general, including the earnings, are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate*, 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation*, 350 Mass. 237, 214 N.E.2d 283 (1966). For exceptions for employee-sponsored retirement plans, including annuities, see 86.5(13).

**86.5(13) Employer-provided or employer-sponsored retirement plans and individual retirement accounts.** Iowa Code section 450.4(5) provides an exemption on that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary.

This exemption applies regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

For the purposes of this exemption:

*a.* An "individual retirement account" includes an individual retirement annuity or any other arrangement as defined in Section 408 of the Internal Revenue Code.

*b.* An "employer-provided or employer-sponsored retirement plan" includes a qualified retirement plan as defined in Section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in Section 457 of the Internal Revenue Code, and an annuity as defined in Section 403 of the Internal Revenue Code.

EXAMPLE 1. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the retirement plan is the decedent's niece. The balance in the retirement plan will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7 when paid to the beneficiary. As a result, Iowa inheritance tax would not be imposed on the value of the retirement plan.

EXAMPLE 2. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the pension is the decedent's niece. A portion of the payments received by the niece will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of payments included as net income. However, the remaining portion of the payments not reported as net income pursuant to Iowa Code section 422.7 would be subject to Iowa inheritance tax. See Iowa Code section 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, for the purpose of determining the taxable or exempt status of payments under a qualified plan, it is not relevant that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death.

**86.5(14) *Distribution of trust property.*** Property of a trust can be divided into two or more trusts, or one or more separate trusts can be consolidated with one or more other trusts into a single trust by dividing the property in cash or in kind, including in undivided interests, by pro-rata or non-pro-rata division or in any combination thereof. Division of property between trusts in this manner does not result in a "sale" of the divided property and a corresponding taxable gain.

**86.5(15) *Qualified tuition plans exempt.*** Effective for estates of decedents dying on or after July 1, 2008, in the event that the decedent was the sole plan participant in a qualified school tuition plan, as defined in Section 529 of the Internal Revenue Code; or in the event that a named co-plan participant does not have a lineal relationship to the named beneficiary of the qualified tuition plan, the value of the decedent's interest in the qualified tuition plan is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. This provision applies only to qualified tuition plans in existence on or after July 1, 1998.

**86.5(16) *Qualified ABLE plans exempt.*** Effective for estates of decedents dying on or after January 1, 2016, the value of the decedent's interest in the Iowa ABLE savings plan trust is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. The value of the decedent's interest in an ABLE savings program administered by another state with which the Iowa treasurer of state has entered into an agreement allowing Iowa residents to participate in the other state's qualified ABLE program under the terms of Iowa Code section 12I.10 is also not subject to Iowa

inheritance tax if the decedent is an Iowa resident. For more information on qualified plans administered by other states, see Iowa Code section 12I.10 and rule 701—40.81(422).

This rule is intended to implement Iowa Code sections 422.7, 450.2, 450.3, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A and Iowa Code section 450.4 as amended by 2015 Iowa Acts, chapter 137.

[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 2633C, IAB 7/20/16, effective 8/24/16; ARC 2691C, IAB 8/31/16, effective 10/5/16]

## **701—86.6(450) The net estate.**

### **86.6(1) Liabilities deductible.**

*a. Debts owing by decedent.* A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. *In re Estate of Tollefsrud*, 275 N.W.2d 412 (Iowa 1979); *In re Estate of Thomas*, 454 N.W.2d 66 (Iowa App. 1990); *Estate of Pauline Bladt*, Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

The term "debt of the decedent" does not include taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman*, 257 Iowa 263, 265, 132 N.W.2d 755 (1965). Please note, that this is a nonexclusive example of "debt of the decedent." Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent are not debts nor treated as expenses of settlement. *In re Estate of Bliven*, 236 N.W.2d 366, 371 (Iowa 1975); *In re Estate of Wells*, 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon*, 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz*, Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy*, Department of Revenue and Finance, Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974).

The debt must have been paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson*, 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

*b. Mortgages—decendent's debt.* A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

*c. Mortgages—not decendent's debt.* If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe*, 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

*d. Mortgages—nonprobate property.* A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

*e. Inheritance and accrued taxes.*

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow*, 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke*, 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board*, 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9) "b." As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

*f. Federal taxes.* Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

*g. Funeral expenses.* The deduction is limited to the expense of the decedent's funeral, which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible

include, but are not limited to, family travel expenses. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter*, 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneebbs*, 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit*, 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant*, 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris*, 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneebbs*, 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

*h. Allowance for surviving spouse and dependents.* An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374; *In re Estate of DeVries*, 203 N.W.2d 308, 311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of the court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

*i. Court costs.* The deduction under this category is limited to Iowa court costs only. *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with "costs of administration" as defined in Iowa Code section 633.3(8) or "administration expenses" under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). "Court costs" is a narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk's docket, and paid routinely in the process of closing every estate. *In re Estate of Waddington*, 201 N.W.2d 77, 79 (Iowa 1972). The term "court costs" since August 15, 1975, also includes the expenses of selling property. See Iowa Code sections 450.12 and 633.3(8) and Internal Revenue Code Section 2053 for further details.

*j. Additional liabilities that are deductible.* Subject to subrules 86.6(4) and 86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;
2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;
3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and
4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph "a" of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

**86.6(2) Prorated liabilities.**

*a.* The amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

*b. Liabilities that must be prorated.* If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are: (1) court costs, both foreign and domestic; (2) unsecured debts

of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

*c. Liabilities that are not prorated.* Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by: (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

*d. Prorated cash bequests.* Rescinded IAB 10/30/13, effective 12/4/13.

**86.6(3)** *Liabilities deductible from property not subject to the payment of debts and charges.*

*a. Estates with all of the property located in Iowa.* Subject to the special provisions in 86.6(3) "c," the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. The liabilities must be paid. If a liability is not paid in full, the amount deductible is limited to the amount paid. If the amount claimed is not certified as paid by the time the inheritance tax return is filed, the statute requires that the director must be satisfied that the liabilities, or portions thereof deductible, will be paid.

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, gifts to each donee made within three years of death up to an amount equal to the annual federal gift tax exclusion, and property with a situs outside Iowa.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the remaining property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of the ratio the value of each person's share of the remaining property in the gross estate bears to the total value of the remaining property included in the gross estate.

(2) General rules.

1. The source of the funds used for payment of the excess liabilities is not relevant to the allowance of the deduction. It is sufficient for the allowance of the deduction that the liability be paid.

2. The applicability of the statute is limited to the deduction for inheritance tax purposes of those liabilities listed in Iowa Code subsection 450.12(1). It neither enlarges nor diminishes the rights of creditors under existing Iowa law.

3. The statute is not limited to estates which are probated and subject to the jurisdiction of the probate court. The statute also applies to estates which file an inheritance tax return for a tax clearance (CIT proceedings) or those otherwise not probated such as, but not limited to, inter vivos trusts whose assets are subject to inheritance tax, estates consisting of joint tenancy with right of survivorship property, estates whose assets consist of transferred property with a reserved life use or interest, estates whose assets consist of gifts made within three years of the decedent's death and estates consisting entirely of qualified terminal interest property (QTIP) in the estate of the surviving spouse.

The statute will apply to any estate when any share of the estate will remain taxable after being reduced by the liabilities in Iowa Code subsection 450.12(1) which are lawfully charged to the share and the deduction of any statutory exemption. Excess liabilities must be prorated over all of the property not subject to debts and charges regardless of whether or not the property is part of a taxable share.

*b. Estates with part of the property located outside Iowa.* Iowa Code section 450.12(2) and subrule 86.6(2) require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in 86.6(3) “c,” in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 86.6(3) “a”(1)“1” to “4.”

*c. Special rule for liabilities secured by property included in the gross estate.* If a liability which is deductible under Iowa Code section 450.12(1) “a” is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations.

**86.6(4) Resident and nonresident deductions distinction abolished.** Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 1545C, IAB 7/23/14, effective 8/27/14]

**701—86.7(450) Life estate, remainder and annuity tables—in general.** For estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners’ standard ordinary mortality table at the rate of 4 percent per annum.

**86.7(1) Tables for life estates and remainders.** This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. The two factors on the same line on the next page added together equal 100 percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within 12 months after the death of the decedent who created the life estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent’s death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174
95	.04866	.95134
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	1.00000

**86.7(2)** *Table for an annuity for life.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. To find the present value of an annuity or a given amount (specified sum) for life, annualize the annuity payments and multiply the result by the annuity factor in Column 3 opposite the age at the nearest birthday of the person receiving the annuity.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061
86	4.06	3.0988
87	3.80	2.8961
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564
95	1.80	1.2166
96	1.51	.9503
97	1.18	.6487
98	.83	.3189
99	.50	.0000

**86.7(3)** *Annuity tables when the term is certain.* This table is to be used to compute the present values of two types of annuities: (1) the use of property for a specific number of years and (2) an annuity of a specific amount of money for a number of years certain. To compute the present value of the first annuity, multiply the value of property by 4 percent. Then multiply the result by the annuity factor opposite the number of years of the annuity. Multiply the value of the property by the remainder factor for the present value of the remainder. For the second annuity annualize the payments and multiply the result by the annuity factor opposite the number of years of the annuity. Subtract the present value of the annuity from the value of the property from which the annuity is funded for the remainder value.

<u>Number of Years</u>	<u>Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years</u>	<u>Present Value of One Dollar, Payable at the End of a Certain Number of Years</u>
	ANNUITY	REMAINDER
1	\$0.96154	\$0.961538
2	1.88609	0.924556
3	2.77509	0.888996
4	3.62990	0.854804
5	4.45182	0.821927
6	5.24214	0.790315
7	6.00205	0.759918
8	6.73274	0.730690
9	7.43533	0.702587
10	8.11090	0.675564
11	8.76048	0.649581
12	9.38507	0.624597
13	9.98565	0.600574
14	10.56312	0.577475
15	11.11839	0.555265
16	\$11.65230	\$0.533908
17	12.16567	0.513373
18	12.65930	0.493628
19	13.13394	0.474642
20	13.59033	0.456387
21	14.02916	0.438834
22	14.45112	0.421955
23	14.85684	0.405726
24	15.24696	0.390121
25	15.62208	0.375117
26	15.98277	0.360689
27	16.32959	0.346817
28	16.66306	0.333477
29	16.98371	0.320651
30	17.29203	0.308319

**86.7(4)** *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* For estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in

computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following table is to be applied in the same manner as specified in subrule 86.7(1).

1980 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	.91904	.08096	50	.61730	.38270
1	.91919	.08081	51	.60576	.39424
2	.91689	.08311	52	.59399	.40601
3	.91443	.08557	53	.58199	.41801
4	.91186	.08814	54	.56979	.43021
5	.90914	.09086	55	.55740	.44260
6	.90629	.09371	56	.54483	.45517
7	.90329	.09671	57	.53206	.46794
8	.90014	.09986	58	.51906	.48094
9	.89683	.10317	59	.50582	.49418
10	.89338	.10662	60	.49234	.50766
11	.88977	.11023	61	.47862	.52138
12	.88603	.11397	62	.46471	.53529
13	.88219	.11781	63	.45064	.54936
14	.87828	.12172	64	.43647	.56353
15	.87429	.12571	65	.42226	.57774
16	.87027	.12973	66	.40801	.59199
17	.86617	.13383	67	.39372	.60628
18	.86200	.13800	68	.37936	.62064
19	.85773	.14227	69	.36489	.63511
20	.85333	.14667	70	.35031	.64969
21	.84878	.15122	71	.33565	.66435
22	.84404	.15596	72	.32098	.67902
23	.83912	.16088	73	.30639	.69361
24	.83399	.16601	74	.29199	.70801
25	.82865	.17135	75	.27787	.72213
26	.82306	.17694	76	.26405	.73595
27	.81724	.18276	77	.25053	.74947
28	.81117	.18883	78	.23727	.76273
29	.80487	.19513	79	.22422	.77578
30	.79833	.20167	80	.21134	.78866
31	.79155	.20845	81	.19866	.80134
32	.78451	.21549	82	.18625	.81375

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
33	.77723	.22277	83	.17419	.82581
34	.76970	.23030	84	.16260	.83740
35	.76192	.23808	85	.15151	.84849
36	.75389	.24611	86	.14093	.85907
37	.74562	.25438	87	.13081	.86919
38	.73710	.26290	88	.12108	.87892
39	.72836	.27164	89	.11163	.88837
40	.71940	.28060	90	.10235	.89765
41	.71022	.28978	91	.09309	.90691
42	.70083	.29917	92	.08368	.91632
43	.69122	.30878	93	.07390	.92610
44	.68138	.31862	94	.06350	.93650
45	.67131	.32869	95	.05221	.94779
46	.66101	.33899	96	.03994	.96006
47	.65046	.34954	97	.02678	.97322
48	.63966	.36034	98	.01321	.98679
49	.62860	.37140	99	.00000	1.00000

**86.7(5)** *Table for an annuity for life—for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

1980 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>	<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
0	73.30	22.976	50	27.45	15.433
1	72.56	22.980	51	26.61	15.144
2	71.63	22.922	52	25.77	14.850
3	70.70	22.861	53	24.94	14.550
4	69.76	22.796	54	24.13	14.245
5	68.82	22.728	55	23.32	13.935
6	67.87	22.657	56	22.52	13.621
7	66.93	22.582	57	21.73	13.301
8	65.98	22.504	58	20.95	12.976
9	65.03	22.421	59	20.18	12.645
10	64.07	22.334	60	19.41	12.308
11	63.12	22.244	61	18.66	11.966

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>	<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
12	62.16	22.151	62	17.91	11.618
13	61.21	22.055	63	17.18	11.266
14	60.27	21.957	64	16.45	10.912
15	59.32	21.857	65	15.75	10.557
16	58.39	21.757	66	15.05	10.200
17	57.46	21.654	67	14.38	9.843
18	56.53	21.550	68	13.71	9.484
19	55.61	21.443	69	13.06	9.122
20	54.69	21.333	70	12.42	8.758
21	53.77	21.219	71	11.79	8.391
22	52.85	21.101	72	11.17	8.024
23	51.93	20.978	73	10.57	7.660
24	51.01	20.850	74	10.00	7.300
25	50.08	20.716	75	9.44	6.947
26	49.15	20.576	76	8.91	6.601
27	48.23	20.431	77	8.39	6.263
28	47.30	20.279	78	7.90	5.932
29	46.36	20.122	79	7.42	5.605
30	45.43	19.958	80	6.96	5.283
31	44.50	19.789	81	6.52	4.967
32	43.57	19.613	82	6.09	4.656
33	42.64	19.431	83	5.68	4.355
34	41.72	19.242	84	5.29	4.065
35	40.79	19.048	85	4.93	3.788
36	39.87	18.847	86	4.58	3.523
37	38.94	18.640	87	4.26	3.270
38	38.03	18.428	88	3.95	3.027
39	37.11	18.209	89	3.66	2.791
40	36.21	17.985	90	3.37	2.559
41	35.30	17.756	91	3.09	2.327
42	34.41	17.521	92	2.81	2.092
43	33.52	17.280	93	2.52	1.848
44	32.63	17.035	94	2.22	1.588
45	31.75	16.783	95	1.90	1.305
46	30.88	16.525	96	1.56	.999
47	30.01	16.261	97	1.20	.670
48	29.15	15.991	98	.84	.330
49	28.30	15.715	99	.50	.000

**86.7(6)** *Table for life estates and remainders for estates of decedents dying on or after January 1, 2004.* For estates of decedents dying on or after January 1, 2004, the following table is to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The following table is to be applied in the same manner as specified in subrule 86.7(1).

2001 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

The two factors across the page equal 100 percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate or to determine if there would be any tax due.

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	0.94022	0.05978	60	0.54240	0.45760
1	0.93854	0.06146	61	0.52918	0.47082
2	0.93653	0.06347	62	0.51579	0.48421
3	0.93431	0.06569	63	0.50229	0.49771
4	0.93192	0.06808	64	0.48868	0.51132
5	0.92939	0.07061	65	0.47495	0.52505
6	0.92676	0.07324	66	0.46112	0.53888
7	0.92402	0.07598	67	0.44717	0.55283
8	0.92119	0.07881	68	0.43306	0.56694
9	0.91825	0.08175	69	0.41882	0.58118
10	0.91519	0.08481	70	0.40442	0.59558
11	0.91202	0.08789	71	0.38991	0.61009
12	0.90874	0.09126	72	0.37533	0.62467
13	0.90537	0.09463	73	0.36081	0.63919
14	0.90192	0.09808	74	0.34633	0.65367
15	0.89837	0.10163	75	0.33189	0.66811
16	0.89475	0.10525	76	0.31751	0.68249
17	0.89107	0.10893	77	0.30318	0.69682
18	0.88731	0.11269	78	0.28898	0.71102
19	0.88344	0.11656	79	0.27495	0.72505
20	0.87944	0.12056	80	0.26116	0.73884
21	0.87529	0.12471	81	0.24761	0.75239
22	0.87098	0.12902	82	0.23452	0.76548
23	0.86651	0.13349	83	0.22188	0.77812
24	0.86186	0.13814	84	0.20962	0.79038
25	0.85704	0.14296	85	0.19778	0.80222
26	0.85205	0.14795	86	0.18642	0.81358
27	0.84688	0.15312	87	0.17540	0.82460
28	0.84154	0.15846	88	0.16507	0.83493
29	0.83599	0.16401	89	0.15544	0.84456
30	0.83022	0.16978	90	0.14650	0.85350
31	0.82421	0.17579	91	0.13802	0.86198
32	0.81798	0.18202	92	0.12909	0.87091
33	0.81151	0.18849	93	0.12008	0.87992
34	0.80480	0.19520	94	0.11133	0.88867

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
35	0.79786	0.20214	95	0.10320	0.89680
36	0.79068	0.20932	96	0.09618	0.90382
37	0.78326	0.21674	97	0.09014	0.90986
38	0.77559	0.22441	98	0.08532	0.91468
39	0.76767	0.23233	99	0.07952	0.92048
40	0.75949	0.24051	100	0.07338	0.92662
41	0.75104	0.24896	101	0.06745	0.93255
42	0.74233	0.25767	102	0.06160	0.93840
43	0.73335	0.26665	103	0.05590	0.94410
44	0.72412	0.27588	104	0.05042	0.94958
45	0.71463	0.28537	105	0.04523	0.95477
46	0.70490	0.29510	106	0.04045	0.95955
47	0.69491	0.30509	107	0.03604	0.96396
48	0.68468	0.31532	108	0.03199	0.96801
49	0.67415	0.32585	109	0.02823	0.97177
50	0.66333	0.33667	110	0.02479	0.97521
51	0.65223	0.34777	111	0.02174	0.97826
52	0.64086	0.35914	112	0.01899	0.98101
53	0.62926	0.37074	113	0.01643	0.98357
54	0.61743	0.38257	114	0.01357	0.98643
55	0.60539	0.39461	115	0.01107	0.98893
56	0.59317	0.40683	116	0.00869	0.99131
57	0.58077	0.41923	117	0.00638	0.99362
58	0.56821	0.43179	118	0.00437	0.99563
59	0.55542	0.44458	119	0.00246	0.99754
			120	0.00000	1.00000

**86.7(7)** *Table for an annuity for life—for estates of decedents dying on or after January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

2001 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

To find the present value of an annuity or a given amount (specified sum) for life, multiply the annuity by the annuity factor opposite the age at the nearest birthday of the person receiving the annuity.

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
0	78.65	23.505
1	77.73	23.464
2	76.78	23.413
3	75.81	23.358
4	74.84	23.298
5	73.86	23.235
6	72.87	23.169
7	71.89	23.101
8	70.91	23.030
9	69.92	22.956
10	68.94	22.880
11	67.95	22.801
12	66.97	22.718
13	65.99	22.634
14	65.01	22.548
15	64.04	22.459
16	63.07	22.369
17	62.11	22.277
18	61.15	22.183
19	60.19	22.086
20	59.23	21.986
21	58.27	21.882
22	57.32	21.774
23	56.36	21.663
24	55.40	21.547
25	54.45	21.426
26	53.49	21.301
27	52.53	21.172
28	51.58	21.038
29	50.63	20.900
30	49.67	20.755
31	48.72	20.605
32	47.76	20.449
33	46.81	20.288
34	45.85	20.120
35	44.90	19.946
36	43.95	19.767
37	43.00	19.581
38	42.05	19.390
39	41.11	19.192
40	40.16	18.987
41	39.22	18.776
42	38.28	18.558

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
43	37.35	18.334
44	36.42	18.103
45	35.49	17.866
46	34.57	17.623
47	33.65	17.373
48	32.74	17.117
49	31.84	16.854
50	30.94	16.583
51	30.04	16.306
52	29.15	16.021
53	28.27	15.731
54	27.40	15.436
55	26.54	15.135
56	25.68	14.829
57	24.84	14.519
58	24.01	14.205
59	23.19	13.886
60	22.38	13.560
61	21.57	13.229
62	20.78	12.895
63	20.00	12.557
64	19.24	12.217
65	18.49	11.874
66	17.75	11.528
67	17.02	11.179
68	16.31	10.827
69	15.60	10.470
70	14.91	10.110
71	14.23	9.748
72	13.56	9.383
73	12.91	9.020
74	12.28	8.658
75	11.66	8.297
76	11.06	7.938
77	10.47	7.580
78	9.91	7.224
79	9.36	6.874
80	8.83	6.529
81	8.32	6.190
82	7.84	5.863
83	7.38	5.547
84	6.94	5.240
85	6.52	4.944

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
86	6.13	4.660
87	5.75	4.385
88	5.41	4.127
89	5.09	3.886
90	4.79	3.662
91	4.51	3.451
92	4.23	3.227
93	3.94	3.002
94	3.67	2.783
95	3.43	2.580
96	3.21	2.405
97	3.03	2.253
98	2.88	2.133
99	2.71	1.988
100	2.53	1.835
101	2.35	1.686
102	2.18	1.540
103	2.02	1.398
104	1.87	1.260
105	1.72	1.131
106	1.59	1.011
107	1.47	0.901
108	1.35	0.800
109	1.25	0.706
110	1.16	0.620
111	1.08	0.544
112	1.00	0.475
113	0.93	0.411
114	0.86	0.339
115	0.79	0.277
116	0.73	0.217
117	0.67	0.159
118	0.61	0.109
119	0.56	0.062
120	0.50	0.000

This rule is intended to implement Iowa Code sections 450.51 and 450.52.  
[ARC 1137C, IAB 10/30/13, effective 12/4/13]

**701—86.8(450B) Special use valuation.**

**86.8(1) In general.** Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2032A for computing the federal estate tax is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under

Iowa Code section 450.37. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and remainders in real estate specially valued is determined by (1) applying the life estate, remainder or term tables to the special use value—see rule 86.7(450), or (2) by dividing the special use value by the decedent's fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest, real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, real estate held by a partnership or corporation and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

**86.8(2) Definitions and technical terms.** References in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.3(5). Technical terms such as, but not limited to, “qualified real property”; “qualified use”; “cessation of qualified use”; “disposition”; “qualified heir”; “member of the family”; “farm”; “farming purpose”; “material participation”; and “active management” are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 2032A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

**86.8(3) Eligibility requirements.** The eligibility requirements for valuing real estate at its special use value for computing inheritance tax are the same as the eligibility requirements of 26 U.S.C. Section 2032A for the purpose of computing the federal estate tax imposed by 26 U.S.C. Section 2001. Real estate cannot be specially valued for inheritance tax purposes unless it is also eligible and is valued at its special use value for federal estate tax purposes. However, even though real estate is specially valued for federal estate tax purposes, the estate has the right to elect or not to elect to value real estate at its special use value for computing the inheritance tax. Real estate otherwise qualified will be eligible for special use valuation for Iowa inheritance tax purposes if a valid special use valuation election has been made on the federal estate tax return. What constitutes a valid election for federal estate tax purposes is determined under applicable federal law and practice and is not determined by the department.

**86.8(4) Real estate—not eligible.**

*a.* Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.

*b.* Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 86.2(8) and 86.2(9). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See *In re Estate of Millard*, 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 86.8(5)“e,” the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

**86.8(5) Election and agreement.**

*a. In general.* The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the

election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

*b. Form—election.* The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed copy of the election filed as part of the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

*c. Content of the election.* The election must be accompanied by the agreement specified in 86.8(5)“e” and shall contain the information required by federal regulation Section 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes will fulfill the requirements of this subrule.

*d. Protective elections.* A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 86.8(5)“c” and is to be attached, together with the agreement provided for in 86.8(5)“e,” to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

*e. Agreement.* An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent’s death. In the agreement, the qualified heirs must consent to personal liability for the additional inheritance tax imposed by Iowa Code section 450B.3 in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir’s share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

*f. Failure to file the election and agreement.* Failure to file with the inheritance tax return either the election provided for in 86.8(5)“b” or the agreement specified in 86.8(5)“e” shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance tax purposes at its market value in the ordinary course of trade under the provisions of Iowa Code section 450.37.

**86.8(6) Value to use.**

*a. Special use value.* The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property.

*b. Fair market value when a recapture tax is imposed.* The additional inheritance tax imposed by Iowa Code section 450B.3, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent’s death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 86.8(6)“c.” Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Revenue Service.

Iowa Code section 450.37 only applies to property which is not specially valued under Iowa Code chapter 450B.

*c. Fair market value limitations.* The following fair market value limitations shall govern the computation of the additional inheritance tax imposed, if any. If at the time of its disposition or cessation of the qualified use, the fair market value of the property which is the subject of the additional tax is:

1. Greater than its fair market value at the time of the decedent's death, the additional tax is computed on the fair market value at death.

2. Less than its fair market value at the time of death but greater than the special use value, the additional tax is computed on the lesser fair market value.

3. Equal to or less than the special use value of the property, no additional inheritance tax is imposed. In this event, no refund is allowed. Iowa Code chapter 450B makes reference only to the imposition of additional inheritance tax, not to an additional benefit if the agreement is not fulfilled.

As a result, failure to fulfill the agreement provided for in 86.8(5) "e" may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

**86.8(7) Imposition of additional inheritance tax.**

*a. In general.* If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 86.8(6) "c." Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

*b. Additional tax on life or term estates and remainders.* The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, subrule 86.2(7) implementing Iowa Code section 450.44 does not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

*c. Interplay of the additional inheritance tax with the Iowa estate tax for deaths occurring prior to January 1, 2005.* In the event of an early disposition or cessation of the qualified use of the specially valued real estate, the federal estate tax is recomputed with a corresponding recomputation of the credit allowable under 26 U.S.C. Section 2011 for state death taxes paid. If the maximum allowable credit for state death taxes paid as recomputed is greater than the total inheritance tax obligation on all of the shares of the estate, including the shares which have not been revalued, the amount of the maximum credit for state death taxes paid is the additional tax.

*d. Computation of the tax—full disposition or full cessation.* If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 86.8(6) "c" on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A

credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE. Farmer A, a widower, died July 1, 1992, a resident of Iowa, and by will left all of his property to his three nephews in equal shares. Nephew B operates the farm. Nephew C lives in Des Moines, Iowa, and Nephew D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

<u>Asset</u>	<u>Fair Market Value</u>	<u>Special Use Value</u>
160-acre Iowa farm	\$ 480,000 (\$3,000 per acre)	\$ 160,000 (\$1,000 per acre)
Grain and livestock	90,000	90,000
Stocks, bonds and bank accounts	<u>80,000</u>	<u>80,000</u>
Gross Estate	\$ 650,000	\$ 330,000
Less: Deductions without federal estate tax	<u>25,000</u>	<u>25,000</u>
Net estate before federal estate tax	\$ 625,000	\$ 305,000

COMPUTATION OF THE INHERITANCE TAX  
UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	\$305,000
Less: Federal estate tax	<u>4,120</u>
Net Estate	\$300,880

TAX ON SHARES

<u>Beneficiary</u>	<u>Share</u>	<u>Tax</u>
To each nephew	\$101,666.67	\$11,250.00
Total Tax Paid	\$11,250 × 3	= \$33,750.00

On October 15, 1995, Nephew B, the qualified heir, retires from farming and all three nephews sell the farm to a nonrelated party for \$3,200 per acre, or \$512,000. Under 86.8(6)“c,” the \$3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX DUE TO THE EARLY  
DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax	\$625,000
Less: Revised federal estate tax (\$9,250 was deducted for credit for state death taxes paid)	<u>0</u>
Net Estate	\$625,000

<u>Tax on Shares</u>	<u>Share</u>	<u>Tax</u>
To each nephew \$208,333.33	\$27,250.00	
Less tax previously paid	<u>11,250.00</u>	
	16,000.00	
Additional tax due		
Interest at 10% from 4-03-93 to due date 4-15-96		<u>\$4,734.40</u>
Total Due Each Nephew		\$20,734.40
Total additional tax and interest for all three shares $\$20,734.40 \times 3 = \$62,203.20$ .		

NOTE: In this example, the total additional tax for the three nephews before a credit for tax previously paid is  $\$27,250.00 \times 3$  or  $\$81,750.00$ . The credit for state death taxes paid on the revalued federal estate is  $\$9,250.00$ . Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning the last day of the ninth month after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, 1996.

*e. Computation of the tax—partial disposition or cessation of the qualified use.*

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir (brother of the decedent) is  $\$100,000$  and the special use value of the three parcels is  $\$75,000$ . The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	\$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

Computation of Maximum Amount of Additional Tax

Tax based on fair market value ( $\$100,000 \times 10\%$ )	\$10,000
Tax based on special use value ( $\$75,000 \times 10\%$ )	<u>7,500</u>
Maximum amount of additional tax	\$ 2,500

Computation on the First Partial Additional Tax

Parcel 1, sale to an unrelated party

FMV of Parcel 1	<u>\$ 25,000</u>	$\times$	\$2,500	=	\$625
FMV of all special use property	\$100,000		(Maximum add'l tax)		(First add'l tax)

(2) Second or any succeeding disposition or cessation of the qualified use. Compute the maximum amount of the additional tax as outlined in the first partial disposition or cessation of the qualified use. Increase the numerator of the fraction used to determine the first additional tax by the fair market value

of the second partial disposition or cessation of the qualified use. The denominator remains the same. The computed tax is then credited with the tax paid on the first partial disposition or cessation of the qualified use. Succeeding partial dispositions or cessations of the qualified use are handled in the same manner by increasing the numerator of the fraction and a corresponding increase in the credit for the prior additional tax paid.

Computation of the second and succeeding partial dispositions or cessations of the qualified use can be illustrated by the following examples:

**EXAMPLE 2.** Second partial additional tax. Same facts as in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2	<u>\$ 75,000</u>	×	\$2,500 (Maximum add'l tax)	=	\$1,875
FMV of all special use property	\$100,000				
Less tax paid on Parcel 1					<u>625</u>
Second Add'l Tax					\$1,250

**EXAMPLE 3.** Third partial additional tax. Same facts as in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3	<u>\$100,000</u>	×	\$2,500 (Maximum add'l tax)	=	\$2,500
FMV of all specially valued real estate	\$100,000				
Less tax paid on Parcels 1 & 2					<u>1,875</u>
Third Additional Tax					\$ 625

*f. No additional tax on shares not revalued.* The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

**EXAMPLE.** Decedent A, a widower and resident of Iowa, died testate July 1, 1992, survived by nephew B and niece C. His estate consisted of two Iowa farms and certain personal property. Under A's will, the niece and nephew share equally in the personal property. Nephew B received one farm and niece C the other one. Nephew B, a qualified heir, elected to specially value his farm and niece C did not. The inheritance tax was paid on this basis. Five years after A's death, nephew B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only nephew B owes an additional tax. Niece C's share in the estate is not revalued.

**86.8(8) Return for additional inheritance tax.** The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

**86.8(9) Due date for paying the additional inheritance tax.** The additional inheritance tax imposed by Iowa Code section 450B.3 and the return for the additional tax is due six months after the early disposition or cessation of the qualified use of the real estate specially valued.

**86.8(10) No extension of time to file or pay.** Iowa Code chapter 450B makes no provision for an extension of time to file the return for the additional tax and pay the additional inheritance tax due.

Therefore, if the return for the additional tax is not filed or the additional inheritance tax is not paid within six months after the early disposition or cessation of the qualified use, the return or the tax is delinquent and subject to penalty under subrule 86.8(13).

**86.8(11) *Interest on additional tax.*** The additional inheritance tax imposed under Iowa Code section 450B.3 accrues interest at the rate of 10 percent per annum until paid commencing the last day of the ninth month after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

**86.8(12) *Receipt for additional tax.*** The receipt for the additional tax imposed by Iowa Code section 450B.3 is separate and distinct from the receipt for inheritance tax required by Iowa Code section 450.64. The receipt must identify the property which was the subject of the early disposition or cessation of the qualified use, the owners of the property, the qualified heir, the amount paid and whether the additional tax paid is for a partial or full disposition or cessation of the qualified use.

**86.8(13) *Penalty for failure to file or failure to pay.*** Department rules 701—Chapter 10, pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance tax or to pay the additional tax due imposed by Iowa Code section 450B.3.

**86.8(14) *Duties and liabilities.***

*a. Duty to report an early disposition or cessation of the qualified use.* The agent designated in the agreement required by 86.8(5)“e” has the duty to notify the department of any early disposition or cessation of the qualified use of the property on or before the due date of the additional inheritance tax. An executed copy of the notice required by federal regulation Section 20.2032A(c)(4) will satisfy this subrule.

*b. Liability for payment of the tax.* The qualified heir or the heir's successor is personally liable for all the additional inheritance tax imposed under Iowa Code section 450B.3. It is the qualified heir's duty to collect the additional Iowa inheritance tax from each person whose share was revalued. In respect to the additional tax, the duty of the qualified heir is the same as the duty of the fiduciary of an estate or trust under Iowa Code section 450.5, for the regular inheritance tax. See subrule 86.2(1) regarding the responsibility of the fiduciary of an estate or trust. While the qualified heir is primarily liable for the payment of all of the additional tax, each person who has an interest in the real estate no longer eligible to be specially valued is also liable under the agreement provided for in 86.8(5)“e” for additional tax on that person's revalued share. Therefore, if the qualified heir fails to pay the additional tax imposed on any revalued share, the department may proceed to collect the delinquent tax from the person who received the share. The liability for the additional tax due from each person who had an interest in the revalued real estate is the same as the liability for the inheritance tax on property not specially valued. See *Eddy v. Short*, 190 Iowa 1376, 1380, 1832, 179 N.W. 818 (1920); *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906).

*c. Books and records.* It is the duty of the qualified heir to keep books and records necessary to substantiate the continued eligibility of the real estate for special use valuation. Upon request, the agent designated in the agreement shall furnish the department sufficient information relating to the use, ownership and status of the real estate to enable the department to determine whether there has been an early disposition or cessation of the qualified use.

**86.8(15) *Special lien for additional inheritance tax.***

*a. In general.* The special lien created by Iowa Code section 450B.6 is separate and distinct from the lien provided for in Iowa Code section 450.7, for the inheritance tax imposed at the time of the decedent's death. The special lien is to secure any additional inheritance tax that may be due within the ten-year period after the decedent's death, should there be an early disposition or cessation of the qualified use. The inheritance tax lien provided for in Iowa Code section 450.7 is only to secure the

tax imposed at the time of the decedent's death on the transfer of property including property that is specially valued. If an additional tax is imposed for the early disposition or cessation of the qualified use, it is secured by the lien created by Iowa Code section 450B.6.

*b. Form of the notice of the special lien.* The notice of the special lien for additional inheritance tax created by Iowa Code section 450B.6 must conform as nearly as possible to the special use valuation lien provided for in 26 U.S.C. Section 6324B.

*c. Notice of lien.* Unlike the lien provided for in Iowa Code section 450.7, notice of the special lien for additional inheritance tax must be recorded before it has priority over subsequent mortgagees, purchasers or judgment creditors. The special lien is perfected by recording the notice of the special lien in the recorder's office in the county where the estate is being probated (even though the real estate may be located in a different county). Failure to perfect the special lien by recording as provided for in Iowa Code section 450B.6 divests the qualified real property from the lien in the event of a sale to a bona fide purchaser for value.

*d. Duration of the special lien.* The special lien continues:

(1) Until the additional inheritance tax is paid, or ten years after the date the additional tax is due, whichever first occurs, if there is an early disposition or cessation of the qualified use, or

(2) For ten years after the decedent's death on all other property which has been specially valued.

*e. Release of the lien.* The special lien for additional inheritance tax:

(1) May be released at any time in whole or in part upon adequate security being given to secure the additional tax that may be due, if any.

(2) Is released by payment of the additional inheritance tax imposed by Iowa Code section 450B.3, on the property which was the subject of an early disposition or cessation of the qualified use.

(3) Is released when it becomes unenforceable by reason of lapse of time.

*f. Application to release the lien.* Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. Supporting documentation may include a copy of the federal release. If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien.

**86.8(16) Valuation of the decedent's interest in corporations, partnerships and trusts—special rules.** If the decedent's interest in a corporation, partnership or a trust has been valued at its special use valuation under 26 U.S.C. Section 2032A for federal estate tax purposes, it is also eligible to be valued at its special use value for inheritance tax purposes, subject to the limitation imposed by statute and these rules. See Internal Revenue Service letter ruling 8108179 (1980) for guidelines in valuing the decedent's interest. Other factors indicative of value, such as the value of other assets, net dividend-paying capacity, book value, profit and loss statements and net worth must also be taken into account in arriving at the value of the decedent's interest for inheritance tax purposes. See Revenue ruling 59-60, 1959-1 C.B. 243 for the factors to be considered in valuing closely held corporate stock. In the event the decedent's interest in a corporation, partnership or trust is no longer eligible to be specially valued, the additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

**86.8(17) Audits, assessments and refunds.** Subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance tax imposed by Iowa Code section 450B.3.

**86.8(18) Appeals.** Rule 701—86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance tax imposed by Iowa Code chapter 450B.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7.

[ARC 1545C, IAB 7/23/14, effective 8/27/14]

**701—86.9(450) Market value in the ordinary course of trade.** Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and subrules 86.9(1) and 86.9(2). If the value is established by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the department of revenue, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). Effective for estates with decedents dying on or after July 1, 2004, if an agreement cannot be reached regarding the valuation of real property, then the department may request, within 60 days after the return is filed with the department, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in Iowa Code section 450.37 and subrule 86.9(2). Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

**86.9(1) In general.** With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. “Market value in the ordinary course of trade” and “fair market value” are synonymous terms. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031(1)(b) and Iowa Code section 441.21(1)“b” for similar definitions of fair market value.

*a. Values not to be used.* Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. *In re Estate of Fred W. Rekers*, Probate No. 28654, Black Hawk County District Court, July 26, 1972.

*b. Date of valuation.* Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any

appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. *Insel v. Wright County*, 208 Iowa 295, 225 N.W.378 (1929).

**86.9(2) Market value—how determined.**

*a. In general.* The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property's monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. *Hetland v. Bilstad*, 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item's value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. *Juhl v. Greene County Board of Review*, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item's fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item's fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1. Under the provisions of the decedent's will, the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for \$2,500. The fair market value of the household goods on the day of sale is \$2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for \$2,500, which may or may not be the fair market value of the property. Family pride, sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

*b. Values established by recognized public markets.*

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

*c. Private sales that may establish fair market value.* Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

*d. Fair market value—no regularly established market.*

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable

to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent \$5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the \$5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of \$300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for \$10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is \$10,000 because it is collectible in full. Each nephew's share of the estate is \$155,000. Nephew C receives \$155,000 in cash and nephew B receives \$145,000 in cash plus his canceled note for \$10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris*, 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen*, 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard*, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell

and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for \$15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.*, 222 N.W.2d 459 (Iowa 1974).

*e. By agreement between the department, the estate and its beneficiaries.* Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or

3. The department does not request an appraisal within 60 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail, and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)"e"(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain

a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 60 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

*f. Values established—no agreement.*

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)“e,” the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, “real estate or real property” means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in rule 701—86.4(450). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2)“e,” the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

*g. Amending returns to change values.*

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as “unknown” or “undetermined.”

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County*, 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department's administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, 450.44 to 450.49, and 633.800 to 633.811.

[ARC 1137C, IAB 10/30/13, effective 12/4/13]

#### **701—86.10(450) Alternate valuation date.**

**86.10(1) When available.** The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is six months after the date of the decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See federal regulation Section 20.2032-1, as amended December 28, 1972, for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. The estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

#### **86.10(2) When not available.**

*a.* The alternate valuation date provided for in 26 U.S.C. Section 2032 cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W. 2d 469 (1950).

*b.* Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

*c.* The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing

requirements under current federal authority. The fact that the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirement is not relevant.

This rule is intended to implement Iowa Code sections 422.3 and 450.37.

**701—86.11(450) Valuation—special problem areas.**

**86.11(1) Valuation of life estate and remainder interests—in general.** Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart*, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans*, 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

**86.11(2) Single life estate and remainder.** The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 701—86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of \$2,000 per acre, or \$320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is .43306; that is, the use of the \$320,000 for life at the statutory rate of return of 4 percent is worth 43.306 percent of the value of the farm. Niece C's remainder factor is .56694. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

<u>Value of B's Life Estate</u>	$\$320,000 \times .43306 =$	\$138,579.20
<u>Value of C's Remainder</u>	$\$320,000 \times .56694 =$	<u>\$181,420.80</u>
Total Value		\$320,000.00

**86.11(3) Joint and succeeding life estates.** If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans*, 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews D and E in equal shares. The 160-acre farm had a fair market value at A's death of \$320,000. Neither the alternate valuation date nor special use value was elected.

#### COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. <u>Value of B's Life Estate:</u>		
Life estate factor for age 68 is .43306		
$\$320,000 \times .43306 =$		\$138,579.20
2. <u>Value of C's Succeeding Life Estate</u>		
Life estate factor for age 45 is .71463		
$\$320,000 \times .71463 =$	\$228,681.60	
Less: B's life estate	<u>\$138,579.20</u>	
Value of C's life estate		\$ 90,102.40
3. <u>Value of D's ½ remainder</u>		
Remainder factor for a life tenant aged 45 is .28537		
as ½ of $\$320,000 \times .28537 =$		\$ 91,318.40
4. <u>Value of E's ½ remainder</u>		
½ of $\$320,000 \times .28537$		<u>\$ 91,318.40</u>
Total Value — life estates and remainders		<u>\$320,000.00</u>

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of \$2,200 per acre, or \$528,000; the alternate value of the farm six months after death was \$2,100 per acre, or \$504,000. Its special use value is \$1,000 per acre or \$240,000. The life estates and the remainder are computed on the basis of the special use value of \$240,000.

#### COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. <u>B's share of joint life estate.</u>		
$\$240,000 \times .64086$ (life estate factor, age 52) =	\$153,806.40	
½ as B's share =		\$ 76,903.20
2. <u>C's share of joint life estate.</u>		
$\$240,000 \times .68468$ (life estate factor, age 48) =	\$164,323.20	

Less: ½ value of life estate for B's life	\$ 76,903.20	\$ 87,420.00
3. <u>Value of the remainder.</u>		
The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .31532, based on C's age of 48.		
<u>D's share of the remainder.</u>		
½ \$240,000 × .31532 =		\$ 37,838.40
<u>E's share of the remainder.</u>		
Same as D's		\$ 37,838.40
Total value of joint life estates and the remainder		<u>\$240,000.00</u>

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth \$76,903.20. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

**86.11(4) Fixed sum annuity for life or for a term of years.** The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 701—86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property, and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum \$5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is \$2,000 per acre, or \$480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE \$5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule 701—86.7(450), the 4 percent annuity factor for life at age 54 is 15.436 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

<u>C's Annuity</u>		
\$5,000 × 15.436 =		\$ 77,180
<u>B's Reversionary — Remainder Interest</u>		
Value of farm	\$480,000	
Less: C's annuity	<u>\$ 77,180</u>	<u>\$402,820</u>
Total annuity and reversion — Remainder		\$480,000

NOTE: In this example, the \$5,000 annuity is worth less than a life estate in the farm. A life estate would be worth \$273,499.20 because the use of \$480,000 at 4 percent per year would return \$19,200 per year, which is much greater than the \$5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of \$100,000 be set aside from the residuary estate to be held in trust to pay \$500 per month to B for life, and upon B's death, the remaining principal and income, if any, are to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is 19.946 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is \$6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's \$6,000 ANNUITY

$\$500.00 \times 12 = \$6,000 \times 19.946 = \$119,676$ , which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is \$100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

**86.11(5) Valuation of remainder interests.** Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 701—86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard*, 251 Iowa 1282, 105 N.W.2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

*a.* If the tax on a remainder or other future property interest is paid within 9 months after the decedent's death (12 months for estates of decedents dying prior to July 1, 1981), the tax is to be based on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, 6 months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

*b.* If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value nor special use value can be used to value the property after nine months from the date of the decedent's death.

*c.* If the tax on the remainder or other future property interest is not paid under paragraphs "a" and "b," the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph "b." If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. For information regarding interest rate, see 701—Chapter 10. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur due to the lapse of time between the due date of the tax and the date the tax is paid.

*d.* Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term “present worth” means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent’s death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph “*b*” or “*c*” of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent’s death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In re Estate of Dwight E. Clapp*, Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

*e.* If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

*f.* Tax rates in effect at the date of the decedent’s death are the rates applicable for computation of the tax owed. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, 2009, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B’s death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was \$2,000 per acre, or \$480,000 on the date of A’s death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 2010, the tax on B’s life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 2011, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for \$2,100 per acre, or \$504,000. B’s life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph “*b*,” when the life estate is terminated before the life tenant’s death. The sale price of the farm and the life estate remainder factor reflecting B’s age on October 15, 2011, (B’s age is now 76) control the value of the remainder.

#### COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 701—86.7(450) for a life tenant aged 76 is .68249.

<u>C’s ½ remainder interest</u>	½ (\$504,000 × .68249) =	\$171,987.48
<u>D’s ½ remainder interest</u>	same as C’s	<u>171,987.48</u>
Total value of remainder		\$343,974.96

NOTE: In this example, the value of C’s and D’s remainder interest in the sale proceeds is greater than the value of the remainder at the time of A’s death due to the increase in the remainder factor because of B’s increased age and the increase in the fair market value of the farm. However, if B’s life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C’s and D’s remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, 2005, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A’s ownership of the remainder interest was not discovered until after life tenant B’s death on October 15, 2007. The fair market value of the farm was \$2,000 per acre or \$480,000 on July 1, 2005, and \$2,200 per acre or \$528,000 on October 15, 2007. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 701—86.10(450) and subrule 86.8(4), paragraph “*c*.” A’s estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, 2007, basing the tax on the fair market value and

the remainder factor corresponding with the life tenant's age (87) on July 1, 2005. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of \$2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, 2008, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

**86.11(6) Valuation of contingent property interests.** Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E, who own the remainder, will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepf*, 258 Iowa 33, 138 N.W.2d 886 (1965).

**86.11(7) Valuation of growing crops owned by the decedent.** Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an "arm's-length transaction," then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for \$3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times 2,000 \text{ bushels} \times \$3.10 \text{ per bushel} = \$3,728.10$$

**86.11(8) Valuation of cash rent farm leases.** If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

EXAMPLES: The decedent has a cash rent farm lease agreement (beginning March 1 through the end of February of the next year) with farmer X for automatic yearly rentals. The rent is due in two installments: \$10,000 on March 1 and \$10,000 on September 1.

1. Decedent dies February 1, 2011.  $\$20,000 \times 338/365 = \$18,520.55$ . Farmer X had paid his two installments in 2010. His next installment is due March 1, 2011, for the new farm rental year. Farmer X has overpaid by \$1,479.45 ( $\$18,520.55 - \$20,000 = -\$1,479.45$ ). No refund or credit is allowed.

2. Decedent dies April 20, 2011.  $\$20,000 \times 51/365 = \$2,794.52$ . Farmer X has paid his March 1 installment of \$10,000. Farmer X has overpaid by \$7,205.48 ( $\$2,794.52 - \$10,000 = -\$7,205.48$ ). No refund or credit is allowed.

3. Decedent dies October 10, 2011.  $\$20,000 \times 224/365 = \$12,273.97$ . Farmer X paid his March installment but has not paid his September installment. Farmer X has underpaid at the date of death.  $\$12,273.97 - \$10,000 = \$2,273.97$ . This amount must be reported as an asset. It is an accounts receivable due at date of decedent's death.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

[ARC 1137C, IAB 10/30/13, effective 12/4/13]

#### **701—86.12(450) The inheritance tax clearance.**

**86.12(1) In general.** The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

**86.12(2) Limitations on the clearance.** Limitations on the inheritance clearance include, but are not limited to:

*a.* If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

*b.* The clearance does not extend to property that is not reported on the return.

*c.* The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

**86.12(3) *The tax paid in full clearance.*** Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph “a,” for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

**86.12(4) *The no tax due clearance.*** If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

**86.12(5) *Clearance releases the lien.***

a. *In general.* Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. *The section 450.7 lien.* Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to July 1, 1995. A lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of \$2,000 per acre, or \$320,000 and personal property worth \$320,000. On May 24, 1995, the inheritance tax return was filed and tax of \$88,000 (\$44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth \$10,000 ( $\$10,000 \times 15\% = \$1,500$ ) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the \$1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

*c. The section 450B.6 lien.* This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

**86.12(6) Distribution of the clearance.** Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.1 as amended by 1999 Iowa Acts, chapter 152, section 32, 450.7 as amended by 1999 Iowa Acts, chapter 151, section 45, 450.27 as amended by 1999 Iowa Acts, chapter 152, section 33, and Iowa Code sections 450.5, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

**701—86.13(450) No lien on the surviving spouse's share of the estate.** Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.

**701—86.14(450) Computation of shares.** The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

**86.14(1) Right to take against the will.** In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and *In the Matter of Campbell*, 319 N.W.2d 275, 277 (Iowa 1982).

**86.14(2) Family settlements.** Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

**86.14(3) Order of abatement.** Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

**86.14(4) Contrary order of abatement.** An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order

of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see, *Estate of Lois C. Olin*, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

**86.14(5)** *“Stepped-up” basis.* If a decedent’s will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a “stepped-up” basis will be utilized when computing the shares which will result in the appropriate beneficiaries’ shares to include the tax obligation that was paid as an additional inheritance. A “stepped-up” basis is based on gifts prior to the residual share; shares paid out of the residue are not stepped-up.

EXAMPLE: Decedent’s will gives \$1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax:  $\$1,000 \times 10\% = \$100$ . Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example):  $\$100 \text{ divided by } 90\% = \$111.11$ . Add the stepped-up tax of \$111.11 to the original bequest of \$1,000. This results in a stepped-up share of \$1,111.11, which allows the nephew to keep \$1,000 after the tax is paid.

**86.14(6)** *Antilapse provision and the exception to the antilapse statute.* Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

**86.14(7)** *Disclaimer.* A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor’s fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor’s fiduciary. For additional details regarding disclaimers, please see Iowa Code Supplement chapter 633E.

Effective for estates with decedents dying on or after July 1, 2004, disclaimers are to be filed in compliance with the Iowa uniform disclaimer Act, Iowa Code Supplement chapter 633E. This Act sets forth new requirements for valid disclaimers. Criteria will be based on the type of property or the interest being disclaimed. General criteria for disclaimers have not changed. To be valid, a disclaimer must be in writing or be stored in electronic record or other medium that is retrievable, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be filed. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest in property of the estate.

A disclaimer becomes irrevocable when it is delivered, filed, or when it becomes effective, whichever occurs later. Delivery of a disclaimer may generally be made by personal delivery, first-class mail, or any other method likely to result in its receipt. However, specific interests being disclaimed require specific means of delivery. For explicit information regarding delivery of a disclaimer based on interest being disclaimed, see Iowa Code Supplement section 633E.12.

**86.14(8)** *Right of retainer.* If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee’s share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

**86.14(9)** *Deferred life estates and remainder interest.* A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another.

In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the death of life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond's being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50.

**86.14(10) Credit on prior transfers.** A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

*a.* The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

*b.* The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate. This means that the tax in the current estate must be apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

EXAMPLE 1: *Limitation—maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate.*

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

Real estate	\$400,000
Cash, etc.	\$250,000
Expenses	\$150,000

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

½ interest in Sister's real estate (current value)	\$225,000
Full interest in his own real estate	\$500,000
½ interest in Sister's cash, etc.	\$ 50,000
Full interest in his own cash, etc.	\$500,000
Expenses	\$200,000

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the current tax due, \$103,875, by the amount of tax paid in the prior estate, \$21,375. The result is \$82,500.

Percentage of Brother A's tax of \$103,875 generated by Sister's property included in Brother B's estate:

$$\$275,000/\$1,075,000 = 25.58\%$$

$$\$103,875 \times 25.58\% = \$26,571.23$$

Maximum credit cannot be more than the tax paid in the prior estate, \$21,375. The tax due in this estate is \$82,500.

*EXAMPLE 2: Limitation—amount of credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate.*

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

Real estate	\$400,000
Cash, etc.	\$250,000
Expenses	\$150,000

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

½ interest in Sister's real estate (current value)	\$225,000
Full interest in his own real estate	\$500,000
½ interest in Sister's cash, etc.	\$ 50,000

Full interest in his own cash, etc.	\$500,000
Expenses	\$200,000

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the amount of the current tax due, \$103,875, by the tax paid in the prior estate, \$21,375. The result is \$82,500.

\$1,075,000 less prior estate properties worth \$275,000 equals \$800,000. Tax would equal \$76,375.

The greater of the two computations (\$82,500 v. \$76,375) is the tax due in the estate. \$82,500 would be due.

EXAMPLE 3: *Two-year requirement.* Same facts as above, except that Brother B dies two years and two months after the date of death of Sister. Tax is \$103,875 with no reduction since it is over the two-year limitation.

EXAMPLE 4: *Multiple beneficiary issues.* Same facts as above, except that beneficiaries of Brother B have changed. If there are multiple beneficiaries in the second estate, only the beneficiaries that are brother, sister, son-in-law, or daughter-in-law relationships to the prior decedent can utilize the credit. The credit is then determined by the property value passing in this estate that can be identified as being inherited by this decedent from a prior estate.

Brother B dies one year and two months after his Sister. He leaves his real estate to Brother A and the residual assets to his two nieces.

Brother B's share of prior decedent's (Sister's) estate equals \$725,000. Tax equals \$68,875. Reduce the current tax due, \$68,875, by the tax paid in the prior estate, \$21,375. The result is \$47,500.

Niece 1's share equals \$175,000. Tax equals \$22,250.

Niece 2's share equals \$175,000. Tax equals \$22,250.

Total tax for Brother B's estate with no reductions equals \$113,375.

Total tax with Brother B's reduced tax is \$92,000.

Computation without the prior decedent's (Sister's) property that passes to a qualified heir:

Brother B's share would be \$500,000. Tax equals \$46,375.

Niece 1's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Niece 2's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Total tax for this computation is \$90,875.

The greater of the two computations is \$92,000. \$92,000 would be due.

**86.14(11) Prorated cash bequests.** If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further

details see *Estate of Dennis M. Billingsley*, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

This rule is intended to implement Iowa Code chapter 450, Iowa Code Supplement chapter 633E, and 2005 Iowa Acts, chapter 38.

[ARC 1137C, IAB 10/30/13, effective 12/4/13]

**701—86.15(450) Applicability.** Any references made within Chapter 86 of these rules to Chapter 87 of these rules, “Iowa Estate Tax,” are applicable only for deaths that occurred prior to January 1, 2005.

This rule is intended to implement 2014 Iowa Acts, House File 2435, section 25.

[ARC 1545C, IAB 7/23/14, effective 8/27/14]

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- [Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]
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<sup>◇</sup> Two or more ARCs

CHAPTER 4  
RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 4]

**875—4.1(88) Purpose and scope.** These rules provide for record keeping and reporting by employers covered under Iowa Code chapter 88 as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics. This chapter applies to public and private employers, and the use of the word “company” or “companies” in the standard adopted by reference herein shall not limit the scope or application of this chapter to private employers.

**875—4.2(88) First reports of injury.** All employers shall report to the Iowa division of workers’ compensation any occupational injury or illness which temporarily disables an employee for more than three days or which results in permanent total disability, permanent partial disability or death. This report shall be made within four days from such event when such injury or illness is alleged by the employee to have been sustained in the course of the employee’s employment. First reports of injury are to be filed in the form and manner required by the division of workers’ compensation. A report to the division of workers’ compensation is considered to be a report to the division of labor services. The division of workers’ compensation shall forward all reports to the division of labor services. This rule does not excuse employers from making reports required by rule 875—4.3(88).

[ARC 1782C, IAB 12/10/14, effective 1/14/15]

**875—4.3(88) Recording and reporting regulations.** Except as noted in this rule, the Federal Occupational Safety and Health Administration regulations at 29 CFR 1904.0 through 1904.46 as published at 66 Fed. Reg. 6122 to 6135 (January 19, 2001) are adopted.

**4.3(1)** The following amendments to 29 CFR 1904.0 through 1904.46 are adopted:

- a. 66 Fed. Reg. 52031-52034 (October 12, 2001)
- b. 67 Fed. Reg. 44047 (July 1, 2002)
- c. 67 Fed. Reg. 77170 (December 17, 2002)
- d. 68 Fed. Reg. 38606 (June 30, 2003)
- e. 79 Fed. Reg. 56186 (September 18, 2014)
- f. 81 Fed. Reg. 29691 (May 12, 2016)
- g. 81 Fed. Reg. 31854 (May 20, 2016)

**4.3(2)** In addition to the reporting methods set forth in 29 CFR 1904.39(a), employers may make reports required by 29 CFR 1904.39 using at least one of the following methods:

- a. Completing the incident report form available at [www.iowaosha.gov](http://www.iowaosha.gov) and faxing the completed form to (515)242-5076 or sending the completed form to [osha@iwd.iowa.gov](mailto:osha@iwd.iowa.gov);
- b. Calling (877)242-6742; or
- c. Visiting 1000 E. Grand Avenue, Des Moines, Iowa.

[ARC 1782C, IAB 12/10/14, effective 1/14/15; ARC 2688C, IAB 8/31/16, effective 11/1/16]

**875—4.4(88) Supplementary record.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.5(88) Annual summary.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.6(88) Retention of records.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.7(88) Access to records.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.8(88) Reporting of fatality or multiple hospitalization incidents.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.9(88) Falsification or failure to keep records or reports.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.10(88) Change of ownership.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.11** Reserved.

**875—4.12(88) Petitions for record-keeping exceptions.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.13(88) Description of statistical program.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.14(88) Duties.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.15(88) Employees not in fixed establishments.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.16(88) Small employers.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.17(88) Bureau of inspections and reporting, research and statistical section forms.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.18(88) Definitions.** Rescinded IAB 1/23/02, effective 1/1/02.

**875—4.19(88) Establishments classified in Standard Industrial Classification Codes (SIC) 52-89 (except 52-54, 70, 75, 76, 79 and 80).** Rescinded IAB 1/23/02, effective 1/1/02.

These rules are intended to implement Iowa Code chapter 88.

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